Guidance for Vapor Product and E-cigarette Manufacturers Regarding Ingredient Disclosure

New requirements for vapor product and electronic cigarette (e-cigarette) manufacturers went into effect on July 1, 2020. This document is intended to provide a guide to compliance with the new law.

What has changed?

Beginning January 1, 2021, Public Health Law Article 17 requires manufacturers of vapor products or e-cigarettes (e-cigarettes) to disclose, to the Commissioner of Health and on their web site, vapor product and e-cigarette ingredients, by-products and contaminants.

Why was the law changed?

The intent of the new law is to more accurately inform consumers of the ingredients and contents of vapor products and e-cigarettes, and to protect the public health in the event such ingredients include chemicals of concern, identified by the Commissioner of Health.

How will the law be implemented?

The Department of Health has proposed regulations¹ for the implementation of the new law. The regulations will set forth detailed procedures for the protection of vapor product and e-cigarette manufacturers confidential and proprietary information and establish a list of chemicals of concern that must be disclosed if they are present as an ingredient, by-product, or contaminant of a vapor product or e-cigarette. Vapor product and e-cigarette manufacturers are encouraged to review and comment on the proposed regulations.

While the proposed regulations progress through the public comment and adoption process, vapor product and e-cigarette manufacturers should make a good-faith effort to comply with the new law, to the extent practicable, including by:

- Disclosing on the manufacturer’s website a list of all intentionally added ingredients and any known by-products or contaminants for each vapor product or e-cigarette offered for sale in New York as well as any investigations or research into the effects on human health of such products or ingredients.
  - The ingredients must be listed in descending order of predominance by weight, except that ingredients present at a weight below one percent may be listed following other ingredients without respect to the order of predominance by weight.
  - The ingredients list must contain the ingredient name, Chemical Abstracts Service (CAS) Registry Number, and all expected functions of the ingredient within the product.
  - If any intentionally added ingredients are being withheld as confidential business information (CBI), the manufacturer must include a statement clearly stating that disclosure of one or more ingredients has been withheld as confidential business information.
  - The most recent date on which information was posted or updated must be included.
  - All information should be posted on the manufacturer's main website, domain name or URL used to communicate with consumers, or on a separate website, domain name or URL. Such site should be no more than one “click” away from the home page of the manufacturer’s main website.
  - All information should be posted in a form that is readily accessible to all users. Users should not be required to register or provide personally identifiable information in order to gain access. Access to information should not be limited through the use of CAPTCHA or similar challenge-response test technologies, visual, auditory, or otherwise. Information disclosed should not be restricted from indexing by search engines, such as Google and Bing.
  - All information should be machine readable by automated systems, including, but not limited to, web browsers, accessibility software to aid the disabled, automated scripts, and other software programs or applications. Research documents can be posted as PDFs but should strive to meet these recommendations to the maximum extent practicable.
  - All posted information should conform to the most current version of the Web Content Accessibility Guidelines (WCAG) adopted by the WCAG Working Group of the World Wide Web Consortium. Version 2.0 of the
WCAG has been adopted as a standard by the International Organization for Standardization (ISO) (ISO/IEC 40500:2012). WCAG Guideline 4.1, “Maximize compatibility with current and future user agents, including assistive technologies,” describes how to validate conformance with the Guidelines. Technologies that prevent data from being machine read or browsed are not acceptable. Research documents can be posted as PDFs but should strive to meet these accessibility recommendations to the maximum extent practicable.

- Information should be posted in English. Posting information in multiple additional languages, including Spanish and the other ten most common languages spoken in New York State, is encouraged.
- Products with different ingredient formulations, for example, different fragrance ingredients, should be listed as separate products. Products with identical ingredient formulations, but in different size packages, can be listed as one product.

- Providing the following information to the Department of Health at the email address below:
  - Manufacturer information, including the complete name of the manufacturer of the final product and the final domestic distributor of the product (if they are different);
  - Name, title, email address, telephone number and mailing address for the manufacturer, domestic distributor, or agent submitting ingredient information on behalf of a manufacturer or domestic distributor;
  - The facility establishment identifier (FEI) number assigned to your establishment by the U.S. Food and Drug Administration (FDA);
  - A list of vapor products or e-cigarettes that are currently sold or will be sold in New York including any additional identifiers needed to uniquely identify the product (e.g., stock-keeping units (SKUs), Universal Product Codes (UPCs), catalog numbers);
  - A link to the webpage where manufacturers are providing disclosure to the public of the ingredients for each product and any investigations or research into the effects on human health of such products or ingredients; and,
  - A statement, if applicable, that disclosure for one or more ingredients has been withheld as confidential business information to protect the manufacturers competitive position.

Until such time as the regulations implementing Article 17 of the Public Health Law are adopted, vapor product and e-cigarette manufacturers making a good faith effort to comply with the new law shall not be subject to enforcement action.
More information:

NYS Department of Health Bureau of Toxic Substance Assessment:
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