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July 8, 2021

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To Whom It May Concern:

These comments are submitted by Truth Initiative in support of the proposed rule to implement restrictions of Local Law 228 of 2019 (LL228). That law expands the ban on the sale of Other Tobacco Products to e-cigarettes and e-liquids and ensures that “concept flavors” are included in the ban.

Truth Initiative is America’s largest nonprofit public health organization dedicated to a future where tobacco and nicotine are things of the past. Our mission is clear: achieve a culture where young people reject smoking, vaping and nicotine. We believe each individual has the right to live in a world free from tobacco and nicotine dependence and tobacco-related death and disease. Our proven-effective, nationally recognized **truth**® public education campaign has prevented millions of young people from becoming smokers, our This Is Quitting vaping cessation program has helped nearly 350,000 young people begin their journey to quit vaping, and our Vaping: Know the Truth school curriculum will be in 2,000 schools by 2022. These programs and others along with our rigorous scientific research and policy work are making strides to end the tobacco epidemic.

As was noted in the proposed rule, flavors attract youth and young adults to try and use tobacco and nicotine products. Nationally, 81 percent of youth who ever tried tobacco chose a flavored tobacco as their first tobacco product.¹ New York City long recognized this and in 2009, banned the sale of flavored in tobacco products, but exempted e-cigarettes as well as mint, menthol or wintergreen flavors in all products. However since then, the growth of youth and young adult e-cigarette use has exploded, and flavors were a key factor in this growth. Indeed, in 2020, 2.93 million middle and high school students in the U.S. had used flavored e-cigarettes in the past 30 days.² Among young adults, 85.2 percent reported using flavored e-cigarettes.³ In 2019, New York City expanded its ban on the sale of flavored tobacco to include e-cigarettes and e-liquids. The proposed rule appropriately updates the definitions of products to implement this new law.



In addition, LL228 clarifies the definition of “characterizing flavor” to ensure that so-called concept flavors are included. Concept flavors are products with vague, non-characterizing descriptions on packaging that do not express refer to the flavor that the product may have. Products with names like “Purple Swish”, “Island Bash”, or “Diamonds” are just a few examples of concept flavors from one company. In some cases, these concept flavor products are more heavily flavored than flavored products with more explicit names. Indeed, a study of sixteen tobacco products purchased in New York City with concept flavors like “Mellow,” “Blue Mixx,” “Pink,” “Robust,” and “Frost” found fourteen of the products had flavor chemical levels that were actually higher than products with typical characterizing flavors.⁴ Further, tobacco products with these concept flavor names have grown as localities such as New York City have adopted flavored tobacco restrictions. One study of cigar sales from 2012 to 2016 found that the proportion of concept flavored sales increased from 9.1 percent to 15.1 percent.⁵ Concept flavors pose a significant challenge for enforcement of flavored tobacco restrictions, since it is difficult for enforcement agencies to determine whether a product is flavored or not. Some localities have chosen not to enforce their flavored tobacco restrictions for concept flavors due to the threat of litigation from the industry or to avoid punishing innocent retailers.⁶

Fortunately, New York City has not backed down from these industry loopholes and has chosen to protect its young residents from these highly flavored concept flavors by strengthening the definitions of characterizing flavors to include concept flavors. Truth Initiative applauds this effort and the proposed rule appropriately implements the change in definition.

The proposed rule goes on to revamp section 28-03 of the code that deals with the Flavored Product List. This section re-establishes a list of products that are known to be flavored – either because of the aroma or taste of the product, or from its marketing materials that state or claim that a product has a characterizing flavor. We appreciate that the rule includes labeling that uses “text, color and/or images...to explicitly or implicitly communicate that the Product has a Characterizing Flavor.” Such language will help reduce the possibility of concept flavors that try to evade the flavor ban.

In conclusion, the proposed rule strongly and accurately implements the language and spirit of Local Law 228. This will go a long way to deterring young people from accessing, trying and using flavored tobacco products and e-cigarettes in New York City. We support this proposed rule and look forward to working with New York City and other localities as they implement such life-saving policies and reduce the toll tobacco and nicotine products take on our nation.

Sincerely,

M. David Dobbins
Chief Operating Officer



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