

Prohibition of Fireworks

Effective date: 3/30/21

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225 of the Public Health Law and Executive Order No. 202.47, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new Subpart 9-4, to be effective upon filing with the Secretary of State, to read as follows:

A new Subpart 9-4, titled Prohibition of Fireworks, is added to read as follows:

9-4.1. Fireworks use prohibited

The use of fireworks or dangerous fireworks, as defined by subdivision (1) of section 270.00 of the Penal Law, during the state disaster emergency declared by Executive Order No. 202, and any extension thereof, is prohibited, except as may otherwise be permitted pursuant to section 405.00 of the Penal Law.

9-4.2. Penalties

A violation of this Subpart is subject to all civil and criminal penalties as provided for by law, including but not limited to Public Health Law § 12-b. For purposes of civil penalties, each use of fireworks shall constitute a separate violation under this Subpart. Individuals who violate this Subpart are subject to a maximum fine of \$500 for the first violation of this subpart; \$1,000 for the second violation of this subpart; and \$2,000 for each additional violation of this subpart.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the regulatory amendment to Subpart 9-4 of Title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York is section 225 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York.

Legislative Objectives:

The legislative objective of PHL section 225 is to regulate all matters affecting the security of life or health or the preservation and improvement of public health in the State of New York. Prohibiting unpermitted use of fireworks is consistent with that authority.

Needs and Benefits:

On July 3, 2020, Governor Andrew M. Cuomo issued Executive Order No. 202.47, which directed and authorized the Department of Health to issue emergency regulations prohibiting the use of fireworks, consistent with Section 270.00 of the Penal Law. In 2019, there were reports of 12 non-occupational, fireworks-related deaths in the United States, as well as an estimated 10,000 injuries treated in U.S. hospital emergency departments. Children younger than 15 years of age accounted for 36 percent of the estimated fireworks-related injuries. Similar to

2018, nearly half of the estimated emergency department-treated, fireworks-related injuries were to individuals younger than 20 years of age. Children 0 to 4 years of age had the highest estimated rate of emergency department-treated, fireworks-related injuries.

Hospitals are on the front lines of the efforts to treat and care for people suffering from COVID-19, and it is important that New York State not lose the gains it has made in reducing daily case counts through diligent social distancing. As we continue our efforts to minimize COVID-19 case counts and “flatten the curve,” it is imperative that people stay safe and refrain from illegal firework use, both to protect themselves and others from fireworks-related injuries, and to minimize the impact on hospital emergency departments.

In addition, there has been evidence of incidents of increased use of fireworks and dangerous fireworks, including in dense areas, which are especially unsafe conditions in which to use them. Use of fireworks and dangerous fireworks presents a danger to public health especially when used in close proximity to people and structures, and the increased prevalence of these reports justifies the need for this emergency regulation to deter such use and protect the public health.

Costs:

Costs to Regulated Parties:

Per Executive Order No. 202.47, Governor Andrew M. Cuomo directed and authorized the Department of Health to issue emergency regulations prohibiting the use of fireworks, consistent with section 270.00 of the Penal Law. Although there has been a long-standing prohibition against fireworks in the Penal Law (subject to certain exceptions), the prohibition of their use and the establishment of a penalty through the PHL would permit violations to be

subject to additional civil and criminal penalties provided for by law, including but not limited to criminal penalties under PHL section 12-b. For the purposes of civil penalties, these regulations impose a maximum fine of \$500 for the first violation (i.e., use of fireworks), \$1,000 for the second violation, and \$2,000 for each additional violation.

Costs to Local and State Governments:

Per Executive Order No. 202.47, Governor Andrew M. Cuomo directed and authorized the Department of Health to issue emergency regulations prohibiting the use of fireworks, consistent with section 270.00 of the Penal Law. Accordingly, under this regulation, local boards of health have authority to assess civil penalties for the use of fireworks. However, it is not anticipated that this regulation will impose any significant costs to state or local governments, as there has been a longstanding prohibition of fireworks within the Penal Law, and this regulation provides an additional enforcement mechanism for local governments.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

There are no specific mandates on local governments.

Duplication:

Per Executive Order No. 202.47, Governor Andrew M. Cuomo directed and authorized the Department of Health to issue emergency regulations prohibiting the use of fireworks,

consistent with section 270.00 of the Penal Law. Although this regulation prohibits the use of fireworks in accordance with section 270.00 of the Penal Law, it also establishes a penalty for their use through PHL. Accordingly, there is no duplication of State law.

Alternatives:

The alternative would be to not promulgate the regulation. However, this alternative was rejected, as the Department of Health believes that this regulation will facilitate increased awareness and enforcement, and the regulation is consistent with Executive Order 202.47.

Federal Standards:

Federal regulations govern certain aspects of firework importation, distribution, storage, and use, as well as the types of fireworks that are legal. However, this regulation does not duplicate those standards and is consistent with the states' authority to place additional regulations on the use of fireworks.

Compliance Schedule:

The regulation became effective upon filing with the Department of State.

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REGULATORY FLEXIBILITY ANALYSIS

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this regulation, as this regulation will not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Unpermitted use of fireworks is already illegal under section 270.00 of the Penal Law, this regulation provides penalties for their use through the Public Health Law. Further, this regulation does not distinguish between different types and sizes of regulated parties located in different geographical areas.

RURAL FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis is not being submitted with this regulation because it will not impose any adverse impact on any rural areas. This regulation has been promulgated in response to the directive contained in Executive Order No. 202.47, and will have uniform statewide application.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

EMERGENCY JUSTIFICATION

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