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April 9, 1958

TO MEMBERS OF THE BOARD OF DIRECTORS
LEGISLATIVE COMMITTEE AND LABELING, PRODUCT
REGISTRATION AND APPLICATION REGULATIONS COMMITTEE

TO THE PRESIDENT, SECRETARY AND LEGISLATIVE COMMITTEE MEMBERS OF THE NEW YORK
PAINT, VARNISH AND LACQUER ASSOCIATION

Subject: Proposed Revision of the Sanitary Code of the City of New York

New York City intends to revise its Sanitary Code. The revision is being prepared by the Legislative Drafting Revision Fund of Columbia University as a Code Revision Project.

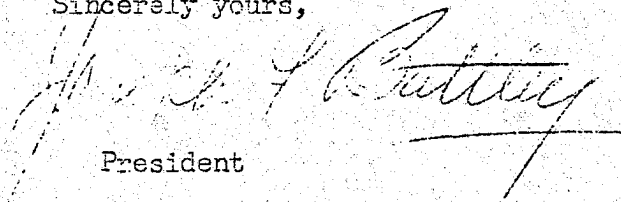
Enclosed is a copy of sections of the proposed Code relating to hazardous substances. Your attention is directed specifically to Sections 211.01, 211.05, 211.07 and 211.13.

Dr. Leona Bangartner, Commissioner of Health of the City of New York, has invited the Association to submit its comments, and to give the Draft "some of your best thinking".

After receipt of industry comments, the Board of Health of the City of New York will consider the Draft for adoption.

I would appreciate careful study of the enclosure and the receipt of your specific comments with recommendations. The Draft is still in the hands of the Legislative Drafting Group and will not be considered by the Board of Health for at least 90 days.

Sincerely yours,


President

JFB:rw
Enclosure

DEPARTMENT OF HEALTH OF THE CITY OF NEW YORK
LEONA PAUMGARTNER, M.D., COMMISSIONER OF HEALTH

SECOND DRAFT

FEBRUARY, 1958

TITLE IV: ENVIRONMENTAL SANITATION

ARTICLE 211: HAZARDOUS SUBSTANCES

This draft, prepared as part of the revision of the Sanitary Code, is based on policy instructions from the Department of Health, principally from the Assistant Commissioner for Environmental Sanitation Services and the Technical Director of the Poison Control Center.

LEGISLATIVE DRAFTING RESEARCH FUND

COLUMBIA UNIVERSITY

CODE REVISION PROJECT

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TITLE IV: ENVIRONMENTAL SANITATION

ARTICLE 211: HAZARDOUS SUBSTANCES

<u>Section</u>	<u>Page</u>
<u>PART I: GENERAL COMMENTS</u>	
Introductory	1
Content and Form of Article 211, Hazardous Substances	1
<u>PART II: DRAFT AND SECTION-BY-SECTION COMMENTARY</u>	
211.01 Definitions	5
211.03 Transfer of hazardous substances; re-use of food, drug and cosmetic containers	9
211.05 Labeling	10
211.07 False or misleading advertising	15
211.09 Rodenticides and Insecticides	15
211.11 Fire extinguishers containing methyl bromide	16
211.13 Lead Paint	17
211.15 Sale of lye prohibited for household use	19
211.17 Gas masks for use in fumigation	20

ARTICLE 211: HAZARDOUS SUBSTANCES

PART I. GENERAL COMMENTS

Introductory

The Second Draft of Article 211 of the New York City Health Code, Hazardous Substances, was prepared on the basis of policy instructions from Assistant Commissioner Jerome Trichter and from Mr. Harry Raybin, Technical Director of the Poison Control Center. These general comments which set forth the major considerations upon which the draft is based, are followed by the draft and more detailed commentary in the revisors' notes following each section of the draft.

This draft is satisfactory to the Department and is submitted to the Board at this time for its consideration, and for its consent to distribution of the material within the Department and to interested outside groups and authorities, preparatory to its resubmission for approval in principle.

The Department of Health is aware of the desirability of uniformity in local and federal labeling requirements for hazardous substances. In view of the fact that the Congress is presently considering enactment of legislation in this area, the Department has indicated that it is prepared to consider any federal legislation which may be passed with a view to recommending such changes in this draft as may be appropriate.

Content and Form of Article 211, Hazardous Substances

Article 211, Hazardous Substances, covers the subject matter contained in S. C. 222 (6), (7) and (8), 230a, 230c and 230d.

This article is primarily concerned with the problem of informative labeling of hazardous substances so as to give the public a sufficient indication of the dangers involved in the use of the substances so that the users will take all necessary and proper precautions against risks of bodily harm. Section 211.01 provides the definitions of terms. Section 211.03 prohibits the transfer of hazardous substances to a new container without relabeling and prohibits the re-use of food, drug and cosmetic containers. Section 211.05 contains the labeling requirements. Section 211.07 prohibits false or misleading advertisement. Then the article contains several sections which deal with manufacture and use of hazardous substances as well as labeling. Section 211.09 deals with rodenticides and insecticides. Section 211.11 contains a limitation on the size of methyl bromide fire extinguishers, a requirement for the addition of warning substances and for labels. Section 211.13 deals with labeling, manufacture and use of lead paints. Section 211.15 prohibits the sale of lye for household use. Finally, Section 211.17 covers the use, labeling and refilling of gas masks and canisters used in fumigation.

In preparing this draft the following laws, ordinances, regulations, bills and proposed model laws were examined; Federal Food, Drug and Cosmetic Act, 21 U.S.C.A. 301 etc.; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.A. 135 etc.; Federal Caustic Poisons Act, 15 U.S.C.A. 401 etc.; Federal Hazardous Articles Bill, S. 1900, 85th Congress, 1st Session (Bush 1957), H.R. 7388, 85th Congress 1st Session (Curtis 1957), and H.R. 9063, 85th Congress 1st Session (Williams 1957); Safe Toy Bill, H.R. 9631, 85th Congress 2nd Session (Bennett 1958); New York State Sanitary Code, Ch. 9 (Certain Health Hazards) and 9A (Labels on Hazardous Substances); Agriculture and Markets Law Art. 11, 145 - 151(e) (Economic poisons), Art. 14A 170 - 172(e) (Sale and distribution of lye and other caustic substances); Education Law, Art. 137 (Pharmacy Law 6801(16) (poison defined), 6813 (poison register), 6805 (registration of pharmacies);

New York City Administrative Code, Art. 9 (Inflammable mixtures) C19-59.0, and Art. 10 (Combustible Mixtures), C19-62.0; New York City Sanitary Code 122, 123, 222(4), 222(6), 222(7), 222(8), 222a, 223, 230a, 230b, 230c, 230d; Regulations of the Fire Department of the City of New York - Rules Relating to Transportation of Inflammable Liquids and Regulations Relating to Labels and Containers of Inflammable and Combustible Mixtures; Guide to Rules and Regulations for the Labeling of Hazardous Materials prepared by the American Conference of Governmental Industrial Hygienists; and the most recent drafts of the model law on hazardous substances being prepared by the Committee on Toxicology of the American Medical Association. In addition, the laws of other states on the subject of hazardous substances were read and analyzed.

Several major changes were made in this draft. Since all of them are commented upon in the revisors' notes following each section they are listed here without further discussion: The definition of hazardous substance is new (section 211.01(a)). A new word "toxic" is added to the definition section (211.01(c)). The definition of "irritant" is broadened to include "sensitizing substances" (section 211.01(g)). "Poison" is defined in a different manner (section 211.01(h)). Labeling is defined (section 211.01(j)) and is now required (section 211.05). Advertisement is defined (section 211.01(k)) and false or misleading advertising of the safety of hazardous substances is prohibited (section 211.07). Transfer of hazardous substances from one container to another is prohibited unless an appropriate label is affixed to the new container (section 211.03(a)). Use of containers designed for, or labeled as holding food, drugs or cosmetics is prohibited for hazardous substances (section 211.03(b)). The requirement for labeling of each hazardous ingredient (section 211.05(b)(2)) is modified to permit the Department to make exceptions for quantities of poisons which because of the small amount or low concentration are harmless. The requirement for signal words such as "Danger" is spelled out with greater

specificity (section 211.05(b)(4)). Two new requirements are added for household containers of hazardous substances (section 211.05(b)(9) and (10)). The chart of suggested labels in S.C. 230c(7) is omitted in favor of a reference to the labels in the publication "Warning Labels" issued by the Manufacturing Chemists' Association (section 211.05(c)). The Department is given power to grant exceptions to the labeling requirements of this Code when the labeling complies with State or Federal Law (section 211.05(d)) or when the container is too small to contain all the information (section 211.05(f)). Children's toys or furniture with a paint containing more than 1% lead cannot be manufactured or sold in the City one year after the effective date of the Code (section 211.13(b)). The Department is given power to order removal of lead paint and to order recovering (section 211.13(d)). After the effective date of the Code, lead paint is prohibited on inside walls in dwellings (section 211.13(c)).

The following portions of the Sanitary Code which provided for certain labels are omitted because they are covered in the general requirements of section 211.05; S.C. 222(h), label for poisonous insecticide or exterminator; S.C. 222a, label for carbon tetrachloride; S.C. 223, label for finely spun glass; S.C. 230d (1) (part) and (2), label for paint containing more than 1% lead; S.C. 122, labeling of poisons; S.C. 123, labeling of products containing methyl alcohol. S.C. 230b, seizure and condemnation of products, is omitted because it is covered by the provision in Title I which gives the Department power to seize products and devices which are not properly labeled.

Additional changes and deletions are found in the notes following each section of the draft.

PART II: DRAFT AND SECTION-BY-SECTION COMMENTARY

Note on Form of Materials: THE TEXT OF THE ARTICLE IS DOUBLE-SPACED WITH LINES NUMBERED. EACH SECTION OF THE TEXT IS FOLLOWED BY THE REVISORS' COMMENTARY WHICH IS SINGLE-SPACED.

ARTICLE 211: HAZARDOUS SUBSTANCES

211.01 Definitions

1 When used in this article:

2 (a) Hazardous substance means a substance which is toxic, flammable,
3 corrosive or an irritant, or which generates pressure through decomposition,
4 heat or other means, and which when used or handled in a customary manner or
5 in a manner which may be reasonably anticipated, is likely to cause injury or
6 illness to man. The reasonably anticipated use of a substance includes its
7 use in a manner not intended by the manufacturer, such as its accidental in-
8 gestion by children.

9 (b) Substance means an element, compound or mixture or any combina-
10 tion thereof.

11 (c) Toxic means having the inherent capacity to produce bodily injury
12 through ingestion, inhalation or absorption through the skin, eye or other
13 surface of the body.

14 (d) Flammable means having a flashpoint of 80°F. or less as determined
15 by the Tagliabue open-cup tester.

16 (e) Extremely flammable means having a flashpoint of 20°F. or less
17 as determined by the Tagliabue open-cup tester.

1 (f) Corrosive means capable of causing destruction of living tissue
2 by chemical action when placed in contact with such tissue.

3 (g) Irritant means a substance which is not corrosive, but which,
4 when placed in contact with living tissue, is capable of inducing either
5 immediately or after prolonged or repeated contact, a substantial local tissue
6 reaction. It includes strong sensitizing substances which, on ordinary hand-
7 ling, may cause an inflammatory reaction in the living tissue of some persons
8 on immediate, prolonged or repeated contact. The frequency and severity of the
9 sensitization reaction shall be considered in determining whether the substance
10 is an irritant.

11 (h) Poison means a substance which falls into one of the following
12 categories:

13 (1) A substance which, in a single dose, may prove fatal to a
14 human being when taken by mouth or applied to the skin or other
15 surface of the body at 1 gram per kilogram of body weight or less,
16 or when inhaled at 100 ppm (parts per million) or less for four hours
17 or less provided such concentrations are likely to be encountered by
18 human beings when the substance is used in any reasonably foreseeable
19 manner; or,

20 (2) A substance with such cumulative toxic effect that repeated
21 absorption of small amounts through ingestion, inhalation or skin or
22 eye contacts over a long period of time may lead to death or perman-
23 ent disability; or,

24 (3) A substance which produces death within 14 days in half or
25 more than half of a group of ten or more laboratory white rats each
26 weighing between 200 and 300 grams, at a single dose of five grams or
27 less per kilogram of body weight when orally administered; or,

1 (4) A substance which produces death within 48 hours in half
2 or more than half of a group of ten or more laboratory white rats
3 each weighing between 200 and 300 grams, when inhaled continuously
4 for a period of one hour or less at an atmospheric concentration of
5 two milligrams or less per liter of gas, vapor, mist or dust if such
6 concentration is likely to be encountered by human beings when the
7 substance is used in any reasonably foreseeable manner; or,

8 (5) A substance which produces death within 48 hours in half or
9 more than half of a group of ten or more rabbits tested in a dosage
10 of 200 milligrams or less per kilogram of body weight, when
11 administered by continuous contact with the bare skin for 24 hours
12 or less.

13 (i) Label means a display of written, printed or graphic matter upon
14 the immediate container of any substance. The term immediate container shall
15 not include package liners.

16 (j) Labeling means all labels and other written, printed or graphic
17 matter upon a hazardous substance, any of its containers or wrappers, or any
18 matter accompanying such hazardous substance.

19 (k) Advertisement means all representations disseminated in any
20 manner or by any means, other than by labeling, for the purpose of inducing,
21 or which are likely to induce, directly or indirectly, the purchase of a
22 substance.

NOTES: Subsection (a), hazardous substances, replaces the definition of "hazard" contained in S.C. 230c(i)(b). A definition similar to the one contained in this subsection is found in the following: S. 1900, 85th Cong. 1st Sess. (1957) hereafter referred to as the Bush Bill; H.R. 7388, 85th Cong. 1st Sess. (1957) hereafter referred to as the Curtis Bill; H.R. 9063, 85th Cong. 1st Sess. (1957) hereafter referred to as the Williams Bill; the Guide to the Rules and Regulations for the

Labeling of Hazardous Substances prepared by the American Conference of Governmental Industrial Hygienists, hereafter referred to as the A.C.G.I.H. Guide; the most recent draft of a model law being prepared by the Committee on Toxicology of the American Medical Association hereafter referred to as the A.M.A. draft. Although all of the above drafts include "radioactive" in the definition of hazardous substance, it is not included in this subsection since the control of radioactive material is found in Article 213, Control of Radiological Hazards, and Labeling is covered by section 213.09(c) and (e).

Subsection (b), substance, is derived from S. C. 230c(1)(i).

Subsection (c), toxic, is new. It is similar to the definition contained in the Bush, Curtis and Williams Bills.

Subsection (d), flammable, is derived in part from S.C. 230c(1)(d) where flammable liquid is defined. This definition is more flexible in that it might be applied to solids, gases or vapors. It should be noted that the Rules Relating to the Transportation of Inflammable Liquids of the Fire Department of the City of New York define "inflammable liquid" as a liquid other than a product of petroleum, shale oil or coal tar which has a flashpoint below 100°F. by the Tagliabue open-cup test. Containers of such liquids must, under those regulations, be labeled "Caution - Inflammable - Keep from Flame".

Subsection (e), extremely flammable, is derived from S.C. 230c(1)(e). Since a substance which is extremely flammable is also flammable, the definition of hazardous substance specifically mentions only the latter. This subsection is included because the words "extremely flammable" are required on certain labels pursuant to section 211.05.

Subsection (f), corrosive, is derived from S.C. 230c(1)(f).

Subsection (g), irritant, is derived in part from S.C. 230c(1)(g). The second sentence of this subsection pertaining to sensitizing substances is new and is based upon a provision contained in the A.M.A. draft.

Subsection (h), poison, is new. It is based upon one of the proposals considered by the A.M.A. Committee on Toxicology. Subdivisions (1) and (2) are contained in the A.C.G.I.H. Guide. Provisions similar to subdivisions (3), (4) and (5) are found in the Bush, Curtis and Williams Bills but they contain different standards for subdivision (3).

The definition of poison in S.C. 230c(1)(c) as a substance "designated as poisonous by laws or regulations of the State of New York, the United States or the City of New York" is not satisfactory. A similar definition, excluding the reference to the City of New York, is found in the State Sanitary Code, Ch. 9A, Reg. 1(c).

When considering the suitability or sufficiency of the proposed definition, the purpose for which it is defined must be considered. Section 211.05 requires poisons to be labeled as such so as to inform the users of the hazards involved. The term "poison" should be reserved only for substances which create a high risk of injury or death upon ingestion, inhalation or contact because if used on too many products it may lose its effect as a warning or deterrent. On the other hand, a product should be labeled "poison" if it would kill a child of two years of age, upon swallowing a single mouthful because such incidents occur so frequently. This draft takes the latter into consideration.

Subsection (i), label, is derived in part from S.C. 230c(1)(p). The exemption for package liners is new. It is suggested by the Bush, Curtis and Williams Bills and by the Federal Food, Drug and Cosmetic Act 201(m) and S.C. 115(l) which relates to the labeling of drugs.

Subsection (j), labeling, is new. It is similar to S.C. 115(15) now contained in section 70.07 of the revised Code.

Subsection (k), advertisement, is new. It is identical to the definition contained in Article 70 of the revised Code which was derived from S.C. 115(16), Education Law 6801(21) and Agriculture and Markets Law 195(5).

The definitions of fume, dust, mist, gas and vapor in S.C. 230c (1)(j), (k), (l), (m) and (n) are omitted.

211.03 Transfer of hazardous substances; re-use of food, drug and cosmetic containers

- 1 (a) No person shall transfer a hazardous substance from one
- 2 container to another without affixing to the new container the label required
- 3 by this article.
- 4 (b) No person shall use, possess, hold for sale, sell, give away or
- 5 leave in any place a hazardous substance in a food, drug or cosmetic container
- 6 or in a container which bears a food, drug or cosmetic label or imprint, or
- 7 which is identifiable as a food, drug or cosmetic container by its character-
- 8 istic shape, impression or closure.

NOTES: This section is new. Subsection (b) is similar to a provision in the A.M.A. draft.

211.05 Labeling

1 (a) No person shall sell, hold for sale, transport, or give away
2 a hazardous substance unless the labeling complies with this article. The
3 provisions of this article are not applicable to a substance used as a drug
4 or cosmetic and labeled pursuant to Articles 70, 111 or 113.

5 (b) The labeling of a package or container of a hazardous substance
6 shall bear the following:

7 (1) The name and place of business of the manufacturer, packer,
8 or distributor;

9 (2) The chemical, common or recognized generic name, not
10 trade name only, of the hazardous substance or of each hazardous
11 component. However, in the case of a mixture containing a poison
12 present in an amount less than 1% by weight or in the case of a
13 mixture of a volatile solvent containing a poisonous solvent in an
14 amount less than 5% by weight, such ingredients shall not be
15 required on the labeling when it is proved to the satisfaction of
16 the Department that the mixture is not a hazardous substance or is
17 otherwise dangerous to health;

18 (3) The word "Poison" and a skull and crossbones symbol for
19 an article which is a poison;

20 (4) A signal word such as "Danger", "Warning" or "Caution"
21 to indicate the degree of hazard. The signal word "Danger" shall
22 be used for substances which are flammable, extremely flammable,
23 highly corrosive, explosive and for substances which because of
24 their toxicity present comparably serious hazards and which, defined
25 in terms of acute lethal dose by mouth, skin or other bodily surface,

1 have a range of from 50 to 500 milligrams per kilogram body weight.
2 The signal word "Warning" shall be used for substances which present
3 a lesser hazard than those required to be labeled "Danger", such
4 as toxic substances which, defined in terms of acute lethal dosage,
5 have a range of 500 to 5000 milligrams per kilogram of body weight.
6 The signal word "Caution" shall be used only for the least hazardous
7 substances which, defined in terms of acute lethal dosage, have a
8 fatal effect in amounts greater than 5000 milligrams per kilogram of
9 body weight.

10 (5) An affirmative statement of the principal hazard or
11 hazards of the substance such as "Flammable", "Extremely Flammable",
12 "Vapor Harmful", "Causes Burns", "Absorbed through Skin" or similar
13 words descriptive of the hazard;

14 (6) Precautionary measures describing the action to be followed
15 or avoided;

16 (7) Instructions for first-aid treatment and, in the case of
17 poisons, for an antidote, if available;

18 (8) If the package or container requires special care in
19 handling or storage, instructions for such handling or storage;

20 (9) The statement "Keep Out of the Reach of Children" or its
21 practical equivalent on retail packages offered for household use;
22 and,

23 (10) Instruction for final disposal of containers on retail
24 packages offered for household use.

25 (c) The requirements in subsections (b)(3), (4), (5), (6), (7) or
26 (8) of this section for a statement on the labeling of a hazardous substance

1 may be met by the use of the statement suggested for such hazardous substance
2 in the 1956 edition of "Warning Labels Manual I-1, A Guide for the Prepara-
3 tion of Warning Labeling for Hazardous Chemicals" published by the Manu-
4 facturing Chemists' Association, or by the use of a practical equivalent of
5 such statement, except that no words shall be regarded as the practical equi-
6 valent of the words "Danger", "Warning", "Caution", "Poison" or "Poisonous".

7 (d) A hazardous substance which is labeled in compliance with
8 applicable State or Federal laws may be exempted by the Department from the
9 labeling requirements of this section if the labeling in such cases complies
10 substantially with the intent of this article.

11 (e) Subsection (b) of this section shall not apply to a substance
12 still in the development stage when it is used solely for experimental
13 purposes and when it is known that no specific hazard exists but the potential
14 hazard is not identified, if it bears the following label or its practical
15 equivalent: "Important! The properties of this substance have not been
16 fully investigated and its handling or use may be hazardous. Exercise due
17 care."

18 (f) When the size of the package or container makes it impossible to
19 include all the information required by subsection (b) of this section, the
20 information required by subsection (b)(6) may be abbreviated and the in-
21 formation required by subsection (b)(8) or (b)(10) may be abbreviated or,
22 upon approval of the Department, omitted.

23 (g) A requirement that any word, statement or other information ap-
24 pear on a label shall not be considered to be complied with unless it also
25 appears on the following:

26 (1) On the front panel, that is the panel on which the sub-
27 stance is identified, of the outside container or wrapper, if any,

1 of the retail package of the substance, unless the required word,
2 statement or other information is easily legible through the outside
3 container or wrapper;

4 (2) On each package liner which contains any written, printed
5 or graphic matter;

6 (3) On each place where there are directions for use.

7 (h) All words, statements or other information required to appear on
8 the label or labeling shall appear in the English language and in a legible
9 type which is contrasted by typography, layout or color from other printed
10 matter on the label, container or wrapper. If the label or labeling contains
11 any representation in a foreign language, all words, statements or other
12 information required to appear on either of them shall also appear thereon in
13 the foreign language.

NOTES: Subsection (a) is derived from part of S.C. 230c(2), but is broader in that it requires proper "labeling" which includes the containers, wrappers and accompanying literature as well as the label on the substance itself. It is to be noted that the requirement applies to all hazardous substances as does S.C. 230c, not only to the "retail package" of the article "intended for household use" as suggested by the Bush, Curtis and Williams Bills. The A.M.A. draft and the A.C.G.I.H. Guide also require labeling of all products including those for commercial use. The exemption for drugs and cosmetics is new; it is found in the Bush, Williams and Curtis Bills.

Subsection (b) is derived in part from S.C. 230c(3) with some changes.

The second sentence of subsection (b)(2) is new. It is suggested by the A.C.G.I.H. Guide. The purpose of the change is to permit omission of ingredients from a label when their presence in a mixture makes them harmless by virtue of the minute quantity involved. A total of 34 poisons were set forth in the A.C.G.I.H. Guide as substances which must be on the label even when present in a concentration of less than 1% by weight. This draft will give the Department the power to decide in all cases when a poison may or may not be omitted from the label.

The requirement for the skull and crossbones symbol in subsection (b)(3) and for the inclusion of an antidote in subsection (b)(7) were contained in a footnote to the table following S.C. 230c(7).

All but the first sentence in subsection (b)(4) is new. It is contained in the A.C.G.I.H. Guide and the A.M.A. draft but not in the Bush, Williams or Curtis Bills.

Subsection (b)(9) is new. It is contained in the A.M.A. draft, the A.C.G.I.H. Guide, and in the Bush, Williams and Curtis Bills.

Subsection (b)(10) is new. There is a similar provision in the A.C.G.I.H. Guide.

Subsection (c) is derived from S.C. 230d(7) and the chart of suggested statements contained in the table that followed. That section was based upon the suggestions contained in Warning Labels, published by the Manufacturing Chemists' Association which were found acceptable to the Department and to the Board. They were also adopted in the State Sanitary Code, Ch. 9-A, Reg. 7. This subsection avoids the necessity of including much material which cannot be enforced effectively in its present tabular form because (1) the description of the classes of hazards is necessarily so vague that it is difficult to determine in some in which group a hazard falls and (2) the statements which are to be included on the label and which are reproduced at some length are only suggestions. The subsection eliminates the vagueness of S.C. 230c(7) because Warning Labels contains a suggested label for each product which could not possibly be reproduced in this Code. It is recognized that the standards for labels were published by the very industry which this article regulates, but the standards contained in the 1956 Edition are satisfactory to the Department. In view of the fact that the industry could in the future amend the Warning Labels in a manner unsatisfactory to the Department, the 1956 Edition is specified. If a later edition is published with significant changes which meet the approval of the Board, this subsection may be amended accordingly. The prohibition against substitutions for the signal words "Poison" and "Poisonous" is broadened to include "Danger", "Warning" and "Caution".

Subsection (d) is new. It was recommended by the Manufacturing Chemists' Association in 1954. The State Sanitary Code, Ch. 9-A, Reg. 6(a) contains a somewhat similar exemption. It reads:

"Packages or containers labeled in compliance with pertinent Federal or New York State laws or regulations may be exempt from the labeling requirements in these regulations, provided that the labels in such cases comply substantially with the intent of these regulations."

The new subsection allows a hazardous substance which is not labeled pursuant to this section to be sold with the prior approval of the Department if it meets applicable laws of the United States or the State of New York. (Note that "State" in this Code means,

unless otherwise specified, the State of New York.) This does not, however, permit an article to be sold in violation of the requirements of sections 211.07 to 211.17.

Subsection (e) is derived from S.C.230c(6). An additional limitation is that in order to be exempted it must be a substance for which no specific hazard is known but which has an unidentified potential hazard.

Subsection (f) is derived from S.C. 230c(4). The material required by subsections (b)(8) and (b)(10) cannot be omitted without the approval of the Department.

Subsection (g) is new. Similar provisions are found in Article 70 for labeling of food, drugs and cosmetics, except for the portion concerning the front panel and place where there are directions for use. The requirement of subdivision (1), is also found in S.C. 133(8) and the Federal Food, Drug, and Cosmetic Act and in the Bush, Williams and Curtis Bills on hazardous articles, except that they contain no reference to the front panels.

Subsection (h) is derived in part from S.C. 230d(5). The last sentence is new and is found in S.C. 133(10), in 21 C.F.R. 1.103(c) for food, drugs and devices, in 21 C.F.R. 1.9(c) for food and in 21 C.F.R. 1.203(b) for cosmetics.

211.07 False or misleading advertising

- 1 A manufacturer, packer, distributor or seller of a hazardous sub-
- 2 stance shall not disseminate or cause to be disseminated an advertisement con-
- 3 cerning such hazardous substance that is false or misleading in regard to its
- 4 safety or use.

NOTES: This section is new. It is similar to Agriculture and Markets Law 202a and Education Law 6821(5) and 6823(4) and S.C. 133(12). The section is concerned with control of the producer or seller and not the communications medium that carries the offending advertisement. A similar provision is found in Articles 111 and 113 for drugs and devices and cosmetics respectively.

211.09 Rodenticides and insecticides

- 5 (a) No person shall sell, hold for sale, give away, leave exposed
- 6 in any place or use as a rodenticide or insecticide, sodium fluoride or a
- 7 mixture containing sodium fluoride, unless it is colored Nile blue, pale
- 8 Nile blue or microline green as designated by Ridgway's Color Standards and

1 Color Nomenclature. If sodium fluoride is held for sale or sold at retail
2 in powdered form in a quantity of five pounds or less, for use as a rodenti-
3 cide or insecticide, it shall be packed in non-refillable containers.

4 (b) No person shall prepare, manufacture, sell, hold for sale, give
5 away, leave in any place or use a rodenticide or insecticide which has as its
6 active ingredient live microorganisms, unless approved by the Department,
7 use of microorganisms which are or may be dangerous to human beings.

NOTES: Subsection (a) is derived from S.C. 222(6). The words "leave
exposed in any place" are new.

Subsection (b) is derived from S.C. 222(7) which prohibited
rodenticides or insecticides which contained living bacterial organisms.
On one hand this prohibition was too broad in that it required elimina-
tion of even harmless bacteria and would appear to require sterilization
of all rodenticides and insecticides. On the other hand it was too
narrow in that it did not cover the harmful viruses and protozoa. This
subsection is designed to prevent the spread of diseases communicable to
man. It is therefore drafted to empower the Department to authorize
the use of microorganisms, which are not dangerous to man, as rodenti-
cides or insecticides.

211.11 Fire extinguishers containing methyl bromide

8 No person shall possess, sell, hold for sale, give away or leave
9 in any place a fire extinguisher containing methyl bromide unless it contains
10 less than 100 grams of methyl bromide and unless it has on the front of the
11 container and on every portion upon which directions for the use of the fire
12 extinguisher are found, a label which, in addition to the matter required by
13 section 211.05, bears the following statement in red letters, one-quarter inch
14 high on a black background: "Warning -- Poison. Contains methyl bromide, a
15 dangerously poisonous gas". Such fire extinguisher shall also contain a
16 suitable odorous, lacrimatory, irritating or sternutatory warning substance
17 approved by the Department. This subsection shall not be construed to pro-
18 hibit the possession of a fire extinguisher containing 100 grams or more of

Of these, 115 cases or 71% were under 10 years of age, 7 cases or 3 1/2% were between 10 years and 19 years of age, 47 cases or 23% were 19 years of age and over, and 4 cases or 2 1/2% were of unknown age. Five cases resulted in death. Four of the five fatalities were 19 years of age or over, the fifth being a three year old child. Although these figures do not distinguish between the accidental ingestions and the attempted suicides, (such figures are not available) it can be seen from the fact that 71% were below age 10 that the vast majority of cases resulted from preventable accidents. The usefulness of lye as a household product is so slight in comparison with its potential as a cause of injury or death, that the complete prohibition of sale for use in the home is now desirable.

211.17 Gas masks for use in fumigation

- 1 (a) No person shall use in fumigation, or sell, hold for sale or
- 2 give away for use in connection with fumigation, a gas mask or a cannister
- 3 of a gas mask unless the mask and cannister are of a type approved by the
- 4 United States Bureau of Mines as suitable for fumigation and unless they
- 5 bear the stamp of approval of the Bureau. This subsection shall not apply
- 6 to the use of gas masks or cannisters in connection with a gas for which the
- 7 Bureau of Mines has not approved a cannister or mask.
- 8 (b) No person shall refill any cannister for use in connection
- 9 with fumigation after the cannister is exhausted, and no person shall use a
- 10 refilled cannister in fumigation.

NOTES: This section is derived from S.C. 222(8) without substantive change.

- 1 methyl bromide by a person who purchased it prior to October 15, 1948, if it
- 2 is labeled pursuant to this section.

NOTES: This section is derived from S.C. 230a(a) and (c). S.C. 230a (b) is deleted as no longer necessary. The provision prohibiting the giving away or leaving of methyl bromide fire extinguishers which do not conform to the requirements is new. At the Board meeting of September 14, 1948, the members expressed a desire to amend the section before it for adoption by specifically preventing the prosecution of a person who already owned an unlabeled methyl-bromide fire extinguisher and intended it solely for his own use and not for resale. Under the revision all methyl bromide fire extinguishers will have to be properly labeled, even those purchased prior to October 15, 1948. The exemption is only for extinguishers of 100 grams or more purchased before that date; but they must bear the required labels.

It should be noted that S.C. 222a which required warning labels on containers of carbon tetrachloride, except fire extinguishers, is omitted from this revision because it is covered by section 211.05 and does not require a special section. This also has the effect of removing the exemption for carbon tetrachloride fire extinguishers which was contained in S.C. 222a(1). Under section 211.05 such fire extinguishers must bear the appropriate labels set forth in subsection (b) of that section.

211.13 Lead paint

- 3 (a) No person shall possess, sell, hold for sale, give away or
- 4 leave in any place a paint containing more than one per cent of metallic
- 5 lead, based upon total non-volatile content of the paint, unless, in addition
- 6 to the matter required by section 211.05, the label on the container bears
- 7 the following statement: "Contains lead. Harmful if eaten. Do not apply
- 8 on toys, furniture or interior surfaces which might be chewed by children".
- 9 This subsection does not apply to marine paints, roof cements and coatings,
- 10 automotive finishes which are not sold at retail or to paints other than
- 11 paints for toys, children's furniture or interior surfaces which might be
- 12 chewed by children, which are sold for purposes other than resale to the City
- 13 or State or Federal Government, or to a manufacturer, an industrial plant, a
- 14 public utility, corporation or metal structural contractor.

1 (b) No person shall manufacture after the effective date of this
2 Code, or sell or hold for sale after one year after the effective date of
3 this Code, children's toys or children's furniture which have a paint con-
4 taining more than one per cent of metallic lead based on the total non-
5 volatile content of the paint.

6 (c) After the effective date of this Code, no person shall use a
7 paint containing more than one per cent of metallic lead based on the
8 total non-volatile content of the paint, on the interior walls, ceilings
9 or window sills of any apartment or room in a tenement, multiple dwelling
10 or one or two family home.

11 (d) When the Department finds that there is a paint containing more
12 than one per cent of metallic lead based on the non-volatile content of the
13 paint on the interior walls, ceilings or window sills of any dwelling, it
14 may order the removal of such paint and the refinishing of the apartment,
15 room or part of a room with a suitable finish which is not in violation of
16 subsection (c) of this section.

NOTES: Subsection (a) is derived from S.C. 230d(1) and (3). The provisions of S.C. 230d(4) are deleted as no longer necessary and the requirement of S.C. 230d(2) is found in section 211.05(h) and therefore is not duplicated here. On October 29, 1954, when S.C. 230d was adopted by the Board some of the members suggested that the warning label be reworded to read: "Do not apply to interior surfaces, furniture or toys which might be chewed by children". The Board thought that the language implying that children chew walls was not the most desirable. The representative of the New York Paint, Varnish and Lacquer Association requested that the Board refrain from changing the wording, even though not desirable, because the Association at some cost had already recommended to some 4,000 members that such a warning be used. The Board did not change the language. Since S.C. 230d has been in effect for several years, and manufacturers have prepared labels in accordance with its provisions at considerable cost, it would be undesirable now, without convincing evidence of the inadequacy of the present warning, to change the required warning. Furthermore, as Dr. Harold Jacobziner advised the Board at the October 1954 meeting,

a study group of the Academy of Medicine which conducted a neurological investigation discovered that paint on window sills and plaster and paint fallen from walls was the chief offender in lead poisonings. Therefore to the extent that children chew on window sills and eat fallen pieces of paint and plaster, they do chew interior surfaces.

Subsection (b) is new. It was suggested by Professor Paul R. Hays at the Board meeting of October 29, 1954. He asked why the Code does not contain a complete prohibition of toys which contain a paint with more than 1% lead. Mr. Trichter said that although manufacturers in this country had not used lead paint on toys for many years, the Department recently found some and also found lead in toys imported from abroad. The Department said its next step would be to recommend to the Board a prohibition of lead painted toys. The Safe Toy Bill, H.R. 9031, 85th Cong. 2nd Sess. (Bennett 1958) would also prohibit such use of lead paint because it prohibits toxic substances in or on toys.

Subsection (c) is new. It is recommended by the Department as the most effective means of reducing deaths and injuries to children from lead poisoning.

Subsection (d) is new. It has been the practice in Baltimore in premises where injury due to lead poisoning occurs although there is no specific mention of lead paint in the Rules and Regulations governing the Hygiene of Housing adopted by the Baltimore Commissioner of Health. The Baltimore Commissioner presumably acts under the general power granted under section 114 of Article 12 of the Baltimore City Code of 1950, which gives him authority to order removal of any dangerous matter or condition in a building. It is possible for the New York Commissioner of Health to order removal of lead paint under section 121.03 of this Code, which pertains to removal of nuisances and dangerous conditions, but the Commissioner would not then have the power to order repainting. There is also considerable practical value in the Board specifically declaring lead paint to be a dangerous condition which, under certain circumstances, the Commissioner can order removed.

211.15 Sale of lye prohibited for household use

- 1 No person shall sell, hold for sale or give away for household use,
- 2 lye or a substance containing more than 5% of lye by weight.

NOTES: This section is new. Under S.O. 230c and the State Caustic Poison Law, Agriculture and Markets Law, Art. 14A, lye has been labeled with the words "poison" and "Danger", a skull and crossbones symbol, numerous directions covering its various uses and antidotes. Unfortunately this labeling has not been sufficiently effective in eliminating the large number of poisonings caused by the ingestion of lye. Over a period of less than 34 months, from March 9, 1955 to December 31, 1957, there were 203 lye poisonings reported to the Poison Control Center.