PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 426 *, Approved and Ordered* July 20, 2020

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

(a) the E-Substances Regulation is made as set out in the attached Appendix 1,

(b) the Health Hazards Regulation, B.C. Reg. 216/2011, is amended as set out in the attached Appendix 2, and

(c) the Tobacco and Vapour Products Control Regulation, B.C. Reg. 232/2007, is amended as set out in the attached Appendix 3.

Minister of Health

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Public Health Act*, S.B.C. 2008, c. 28, ss. 111 (1), 115 and 126 (3);
Tobacco and Vapour Products Control Act, R.S.B.C. 1996, c. 451, s. 11 (2)

Other: OIC 575/2011; OIC 478/2007

R30362103

APPENDIX 1

E-SUBSTANCES REGULATION

Contents

PART 1 – PRESCRIBED HAZARDS AND ACTIVITIES

Definitions

1 In this regulation:

"business owner" means the owner of a business that carries on the sale of restricted e-substances;

"cannabis" has the same meaning as in the *Cannabis Control and Licensing Act*;

"cartridge" includes a cartridge, capsule, pod or similar component of an e-cigarette that is designed to hold an e-substance for heating;

"e-cigarette" has the same meaning as in the *Tobacco and Vapour Products Control Act*;

"e-substance" has the same meaning as in the *Tobacco and Vapour Products Control Act*;

"flavoured" means having a taste or smell of anything other than tobacco;

"manufacturer" includes

(a) a person who produces, formulates, packages, repackages, prepares or reconditions a vapour product for sale to retailers only, and

(b) a wholesaler, distributor, supplier or other person who sells vapour products to retailers only;

"minor" means a person who is under 19 years of age;

"non-therapeutic nicotine" means nicotine and nicotine salts that are not

(a) Schedule I drugs under the Drug Schedules Regulation, or

(b) expressly excepted as Schedule I drugs under that regulation;

"package" means a material, substance or object that is

(a) used to protect, contain or transport a vapour product, or

(b) attached to a vapour product or the vapour product's container for the purpose of marketing or communicating information about the vapour product;

"purchaser" means a person to whom a vapour product is sold

(a) for the person's own use or consumption, or

(b) for use or consumption by another person at the expense of the person to whom the vapour product was sold;

"restricted e-substance" means an e-substance that contains non-therapeutic nicotine;

"retailer" means, subject to section 3 *[no application to out-of-province sales]*, an operator who sells to a purchaser a health hazard prescribed under section 2 (1) *[prescribed health hazards and regulated activities]*;

"sales premises" means the location from which a restricted e-substance is or is intended to be sold;

"sell" means to deal in, sell, offer for sale, distribute or provide, other than distribution or provision by a purchaser for a purpose described in paragraph (b) of the definition of "purchaser";

"vapour product" has the same meaning as in the *Tobacco and Vapour Products Control Act*.

Prescribed health hazards and regulated activities

2 (1) For the purposes of the *Public Health Act*, the following are prescribed as health hazards:

(a) restricted e-substances;

(b) e-substances that do not contain nicotine, nicotine salts or cannabis.

(2) The sale to a purchaser, by a retailer, of a health hazard referred to in subsection (1) is prescribed as a regulated activity.

No application to out-of-province sales

3 This regulation does not apply to an operator who sells vapour products to purchasers through an online platform or mail-order method if the vapour products are not delivered to an address in British Columbia.

PART 2 – SALES AND PACKAGING

Division 1 – Sales and Packaging

Sales restrictions

4 (1) A retailer must not sell an e-substance unless the e-substance contains nicotine, nicotine salts or cannabis.

(2) A retailer must not sell an e-substance that contains both non-therapeutic nicotine and cannabis.

Notice required before sale

5 (1) A retailer must not sell a restricted e-substance from a sales premises unless a notice of intent in respect of the sales premises has been given in accordance with this section.

(2) A notice of intent in respect of a sales premises must be given as follows:

(a) the notice must be given to the minister, in the form and manner required by the minister;

(b) the notice must state

(i) the address of the sales premises, and

(ii) whether minors are permitted on the sales premises;

(c) the notice must be given

(i) at least 6 weeks before a restricted e-substance is first sold from the sales premises, and

(ii) before January 15 of each year that sales are intended to continue.

Content and volumetric restrictions

6 (1) A retailer must not sell a restricted e-substance that contains non-therapeutic nicotine in concentrations greater than 20 mg/mL.

(2) A retailer must not sell a vapour product that exceeds the following maximum capacity:

(a) 30 mL, in the case of a container that holds a restricted e-substance to be used in refilling cartridges;

(b) 2 mL, in the case of a cartridge that holds or is packaged with a restricted e-substance.

Flavour restriction

7 (1) A retailer who sells restricted e-substances from a sales premises to which minors are permitted access must not sell a flavoured restricted e-substance.

(2) A restricted e-substance is deemed to be flavoured for the purposes of this section if the manufacturer or retailer of the restricted e-substance, or a person acting on behalf of either of them, makes a representation that the restricted e-substance is or may be flavoured.

(3) For the purpose of subsection (2), a representation may be made verbally or in writing and be express or implied.

Packaging standards

8 (1) Subject to any enactment of Canada, a retailer must not sell a restricted e-substance unless the product is packaged in a plain manner that does not contain any text or image other than as required or permitted under this section.

(2) A retailer must not sell a restricted e-substance unless the package

(a) states the concentration of non-therapeutic nicotine in the restricted e-substance,

(b) states the total volume of restricted e-substance within the package or, if the package includes multiple cartridges or containers, the volume of restricted e-substance held or that may be held in each cartridge or container,

(c) states "WARNING: nicotine is highly addictive", and

(d) shows the warning symbol set out in the Schedule.

(3) A retailer is permitted to sell a restricted e-substance in a package that states one or more of the following:

(a) the name and contact information of the manufacturer;

(b) the brand name and product name;

(c) the type of product.

Division 2 – Reporting

Reports generally

9 A business owner must make a report under this Division to the minister, in the form and manner required by the minister.

Product reports

10 (1) At least 6 weeks before a restricted e-substance is first sold from a sales premises, the business owner must report all of the following information in respect of the restricted e-substance:

(a) the name and contact information of the manufacturer;

(b) the brand name and product name;

(c) the type of product;

(d) the concentration of non-therapeutic nicotine, expressed in mg/mL;

(e) the capacity, expressed in mL, of the following, as applicable:

(i) the container that holds the restricted e-substance;

(ii) the cartridge that holds or is packaged with the restricted e-substance;

(f) a list of all ingredients, expressed in both the common and scientific names, unless one of these names is not available from the manufacturer;

(g) the flavour, if the restricted e-substance is flavoured.

(2) If any of the information reported under subsection (1) changes, the business owner must report the new information within 7 days after first selling the

restricted e-substance in respect of which changes have been made at the sales premises.

Manufacturing reports

11 (1) If a retailer produces, formulates, packages, repackages or prepares a restricted e-substance for sale from a sales premises, the business owner must report all of the following information in respect of the restricted e-substance:

(a) the name and contact information of the manufacturer of each ingredient;

(b) both the common and scientific names of each ingredient, unless one of these names is not available from the manufacturer.

(2) A report under subsection (1) must be made at least 6 weeks before the restricted e-substance is first sold from the sales premises.

Sales reports

12 (1) In this section, **"reporting period"** means the period beginning October 1 of one year and ending September 30 of the next year.

(2) A business owner must, before January 15, report the volume of sales, from the business owner's sales premises, that occurred within the most recent reporting period.

(3) A report under subsection (2) must include the following for each type of vapour product sold:

(a) the number of containers and cartridges sold, divided according to brand name and product name;

(b) the total volume, expressed in mL, of restricted e-substance in the product;

(c) the flavour, if the restricted e-substance in the product is flavoured.

PART 3 – ENFORCEMENT AND GENERAL

Delegation of inspection and control powers

13 (1) In this section:

"administrator" has the same meaning as in the *Tobacco and Vapour Products Control Act*;

"enforcement officer" has the same meaning as in the *Tobacco and Vapour Products Control Act*.

(2) For the purposes of monitoring compliance with and enforcing this regulation, the administrator and an enforcement officer are authorized under section 125 (4) (a) of the *Public Health Act* to exercise powers of inspection and control as follows:

(a) the administrator may exercise the powers available to the administrator, and must perform the duties of the administrator, under section 4 (4) of the *Tobacco and Vapour Products Control Act*;

(b) an enforcement officer may exercise the powers available to an enforcement officer, and must perform the duties of an enforcement officer,

under sections 3 (2) and (3) and 4 (1) and (2) of the *Tobacco and Vapour Products Control Act*.

(3) For the purposes of subsection (2) of this section,

(a) a reference in section 3 or 4 of the *Tobacco and Vapour Products Control Act* to "this Act" must be read as a reference to this regulation, and

(b) sections 3 (4) and 4 (3) and (5) of the *Tobacco and Vapour Products Control Act* apply if a power referred to in subsection (2) of this section is exercised.

(4) Nothing in this section prevents a health officer from exercising any power or performing any duty under the *Public Health Act* in relation to the sale of an e-substance by a retailer.

Offences

14 A person who contravenes section 4 (1) or (2), 5 (1), 6 (1) or (2), 7 (1), 8 (1) or (2), 10 (1) or (2), 11 (1) or (2) or 12 (2) or (3) of this regulation commits an offence.

Relationship to *Tobacco and Vapour Products Control Act*

15 For greater certainty, the restrictions and requirements in this regulation are in addition to those imposed under the *Tobacco and Vapour Products Control Act*.

Transition for existing stock

16 (1) In this section:

"effective date" means the date on which this section comes into force;

"existing stock" means vapour products that, on the effective date, a previous seller

(a) possesses, or

(b) has contracted for but has not yet taken possession of;

"previous seller" means a retailer who was lawfully selling vapour products immediately before the effective date.

(2) Despite sections 6 to 8 *[restrictions and packaging standards]*, a previous seller may, until September 15, 2020, sell existing stock in contravention of those provisions.

(3) Despite sections 5, 10 and 11 *[notice required before sale and reports]* but subject to subsection (4), a previous seller may sell restricted e-substances on or after the effective date if the previous seller gives, before September 15, 2020,

(a) a notice of intent in accordance with section 5 (2) (a) and (b), and

(b) reports in accordance with sections 10 (1) (a) to (g) and 11 (1).

(4) A previous seller who gives a notice of intent and reports as described in subsection (3) after August 3, 2020 but before September 15, 2020 may not sell restricted e-substances after September 15, 2020 until at least 6 weeks have passed since the date on which the previous seller gave the notice of intent and reports.

(5) This section is repealed September 15, 2021.

SCHEDULE

(Section 8 (2) (d))

Warning symbol

1 The warning symbol that must be included for the purposes of section 8 (2) (d) *[packaging standards]* is as follows:

APPENDIX 2

1 The Health Hazards Regulation, B.C. Reg. 216/2011, is amended by adding the following section:

Non-therapeutic nicotine

9 Nicotine and nicotine salts are prescribed as a health hazard, except for nicotine or nicotine salts that are

(a) Schedule I drugs under the Drug Schedules Regulation, or

(b) expressly excepted as Schedule I drugs under that regulation.

APPENDIX 3

1 The Tobacco and Vapour Products Control Regulation, B.C. Reg. 232/2007, is amended by adding the following section:

Limits on advertising vapour products

4.301 A manufacturer, distributor, wholesaler, retailer, or a person acting on behalf of any of them must not advertise a vapour product in any place, whether inside or outside, by any means that may be seen, accessed or heard by a minor.

2 Section 4.31 (1) is amended

(a) by striking out "A retailer***" and substituting "***Without limiting section 4.301, a retailer***",***

(b) in paragraph (a) by striking out "seen or accessed***" and substituting "***seen, accessed or heard***", and***

(c) in paragraph (b) by striking out "are clearly visible***" and substituting "***is clearly visible or audible***".***

3 ***Section 4.32 is amended by striking out*** **"**Despite section 4.31,**"** ***and substituting*** **"**Despite sections 4.301 and 4.31,**".**