

Proposed amendments identified in red.

Purpose of these amendments is to:

- Expand the purpose of the legislation
- is to prohibit sales of novel nicotine products to young persons and to protect young persons from inducements to use these products.

Tobacco, ~~and~~ Vaping **and** Nicotine Products Act

S.C. 1997, c. 13

Assented to 1997-04-25

An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, ~~and~~ vaping products **and nicotine products**

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Tobacco, ~~and~~ Vaping **and** Nicotine Products Act*.

Interpretation

Definitions

2 The definitions in this section apply in this Act.

accessory means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches, and also means a water pipe. It does not include *cannabis accessories*, as defined in subsection 2(1) of the *Cannabis Act*. (*accessoire*)

additive, in respect of tobacco products, means an ingredient other than tobacco leaves. (*additif*)

analyst means a person designated as an analyst under subsection 34(1). (*analyste*)

blunt wrap means a sheet, including one that is rolled, that is composed of natural or reconstituted tobacco and that is ready to be filled. (*feuille d'enveloppe*)

brand element includes a brand name, trademark, trade-name, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with, or that evokes, a product, a service or a brand of product or service, but does not include a colour.
(*élément de marque*)

emission means a substance that is produced when a tobacco product or vaping product is used. (*émission*)

entity includes a corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not. (*entité*)

furnish means to sell, lend, assign, give or send, with or without consideration, or to barter or deposit with another person for the performance of a service. (*fournir*)

ingredient means any substance used in the manufacture of a tobacco product, vaping product or their components, including any substance used in the manufacture of that substance, and, in respect of a tobacco product, also includes tobacco leaves. (*ingrédient*)

inspector means a person designated as an inspector under subsection 34(1).
(*inspecteur*)

lifestyle advertising means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring. (*publicité de style de vie*)

little cigar means a roll or tubular construction that

- (a) is intended for smoking;
- (b) contains a filler composed of natural or reconstituted tobacco;
- (c) has a wrapper, or a binder and a wrapper, composed of natural or reconstituted tobacco; and
- (d) has a cigarette filter or weighs no more than 1.4 g, excluding the weight of any mouthpiece or tip.

It includes any tobacco product that is designated by the regulations to be a little cigar.
(*petit cigare*)

manufacture, in respect of a tobacco product or vaping product, includes the manufacture of a tobacco product or vaping product for export, as well as the packaging, labelling, distributing and importing of a tobacco or vaping product for sale in Canada.
(*fabriquer*)

manufacturer, in respect of a tobacco product or vaping product, includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer.
(*fabricant*)

Minister means the Minister of Health. (*ministre*)

Nicotine Product means any nicotine-containing product which is defined in Schedule 4.

package [Repealed, 2009, c. 27, s. 2]

prescribed means prescribed by regulation. (*Version anglaise seulement*)

retailer means a person who is engaged in a business that includes the sale of tobacco products or vaping products to consumers. (*détaillant*)

sell includes offer for sale, expose for sale and sell for export. (*vendre*)

tobacco product means a product made in whole or in part of tobacco, including tobacco leaves. It includes papers, tubes and filters intended for use with that product, a device, other than a water pipe, that is necessary for the use of that product and the parts that may be used with the device. (*produit du tabac*)

vaping product means

- (a) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol;
- (b) a device that is designated to be a vaping product by the regulations;
- (c) a part that may be used with those devices; and
- (d) a substance or mixture of substances, whether or not it contains nicotine, that is intended for use with those devices to produce emissions.

It does not include devices and substances or mixtures of substances that are excluded by the regulations, *cannabis*, as defined in subsection 2(1) of the [Cannabis Act](#), *cannabis accessories*, as defined in that subsection, tobacco products or their accessories. (*produit de vapotage*)

young person means a person under eighteen years of age. (*jeune*)

Governor in Council's Powers

Regulations — little cigar and vaping product

2.1 (1) The Governor in Council may make regulations

- (a) designating any tobacco product to be a little cigar for the purpose of the definition *little cigar*;
- (b) designating any device to be a vaping product or not to be a vaping product for the purpose of the definition *vaping product*; and
- (c) designating any substance or mixture of substances not to be a vaping product for the purpose of the definition *vaping product*.

Order in council — little cigar

(2) The Governor in Council may, by order, amend the definition *little cigar* by replacing the weight set out in that definition by a weight that is not less than 1.4 g.

(3) The Governor in Council may, by order, amend Schedule 4.

Her Majesty

Binding on Her Majesty

3 This Act is binding on Her Majesty in right of Canada or a province.

Purpose

Purpose of Act

4. The primary purpose of this Act is to contribute to the elimination of the harms to human and environmental health caused by commercial tobacco and nicotine products.

~~4 (1) The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases.~~

~~Tobacco products~~

~~(2) The purpose of this Act with respect to tobacco products is to support the objectives set out in subsection (1) and, in particular,~~

- ~~(a) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;~~
- ~~(b) to protect the health of young persons by restricting access to tobacco products;~~
- ~~(c) to prevent the public from being deceived or misled with respect to the health hazards of using tobacco products; and~~
- ~~(d) to enhance public awareness of those hazards.~~

~~Vaping products~~

~~(3) The purpose of this Act with respect to vaping products is to support the objectives set out in subsection (1), to prevent vaping product use from leading to the use of tobacco products by young persons and non-users of tobacco products and, in particular,~~

- ~~(a) to protect young persons and non-users of tobacco products from inducements to use vaping products;~~
- ~~(b) to protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products;~~
- ~~(c) to protect the health of young persons by restricting access to vaping products;~~
- ~~(d) to prevent the public from being deceived or misled with respect to the health hazards of using vaping products; and~~
- ~~(e) to enhance public awareness of those hazards.~~

Duties of the Minister

4.2. (1) In the administration of this Act, the Minister shall, having regard to the Constitution and laws of Canada,

- (a) exercise their powers in a manner that
 - (i) protect human health and the environment
 - (iii) promote reconciliation with the Indigenous Peoples of Canada
- (b) develop and implement a Canadian Strategy to Reduce Nicotine Use (“the strategy”) which
 - (i) is informed by and respectful of the perspectives of federal, provincial and municipal health authorities and civil society health charities.

- (ii) establishes specific, measurable and time-bound targets for reducing and phasing out commercial tobacco, vaping and other nicotine use in the general populations and in sub-populations.
 - (iii) includes measures to effectively protect young people from initiating use of commercial tobacco, vaping or nicotine products.
 - (iv) includes measures which support individual and population-wide recovery from tobacco and nicotine addiction.
 - (v) includes measures to reduce the use of commercial tobacco, vaping and nicotine products among First Nations communities which are informed by and supportive of traditional non-commercial tobacco use in these communities.
 - vi) is designed to fully implement the Framework Convention on Tobacco Control.
 - (vii) engages and supports action by provincial and municipal governments, the research community and community groups in the achievement of the purposes of this act.
 - (viii) informs Canadians about and engages them in achieving the purpose of the Act.
 - (viii) includes measures to reduce the environmental damage associated with the use of tobacco, vaping or nicotine products.
- (c) administer a cost-recovery system which finances the strategy through mandatory contributions from the manufacturers of tobacco, vaping or nicotine products.
 - (d) establish and maintain regulatory control of the manufacture and distribution of tobacco products, vaping products and other nicotine products and exercise this control in support the purposes of this Act and the duties of the Minister.
 - (e)(1) this section does not apply to products that are regulated under the Food and Drugs Act.

Considerations

4.2 (2) When designing and implementing the measures in paragraph 3.2 (1) the Minister shall:

- (a) ensure that public health measures adopted across Canada are protected from tobacco industry interference.
- (b) seek to reduce disparities in nicotine use among Canadians
- (c) respect and safeguard the traditional, non-commercial use of tobacco among Indigenous communities in Canada.
- (d) apply the precautionary principle, which provides that the lack of full scientific certainty shall not be used as a reason for postponing measures which are, in the opinion of the Minister, likely to prevent or reduce harm to human health or the environment.

(e) confer, co-operate and support the work of other federal and provincial agencies to advance a comprehensive approach to reducing commercial tobacco and nicotine use.

PART I Tobacco Products

Product standards

5 No manufacturer shall manufacture or sell a tobacco product that does not conform with the standards established by the regulations.

Prohibition — manufacture

5.1 (1) No manufacturer shall use an additive set out in column 1 of Schedule 1 in the manufacture of a tobacco product set out in column 2.

(2) [Repealed, 2018, c. 9, s. 7]

Prohibition — sale

5.2 No manufacturer shall sell a tobacco product set out in column 2 of Schedule 1 that contains an additive set out in column 1.

Marking

5.3 (1) No person shall manufacture or sell a tobacco product that displays a marking, unless the marking is authorized by the regulations.

Exception

(2) A person who manufactures or sells a tobacco product that displays a marking does not contravene subsection (1) if the marking is required under an Act of the legislature of a province.

Additive

(3) Despite sections 5.1 and 5.2, a manufacturer may use a prescribed additive to display on a tobacco product a marking that is authorized by the regulations or that is required under an Act of the legislature of a province and may sell a tobacco product that displays such a marking.

Information required from manufacturer

6 (1) Every manufacturer shall submit to the Minister, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions, whether the tobacco products are for sale or not.

Supplementary information

(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.

Public disclosure by manufacturer

6.1 Every manufacturer shall make available to the public, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about tobacco products and their emissions.

Public disclosure by Minister

6.2 The Minister shall make available to the public, in the prescribed manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions.

Non-application

6.3 Sections 6.1 and 6.2 do not apply in respect of tobacco products that have never been for sale in Canada.

Regulations

7 The Governor in Council may make regulations

(a) establishing standards respecting the characteristics of tobacco products and their emissions, including the sensory attributes — such as appearance and shape — of the products and their emissions, the dimensions, weight, components and performance of the products, and the amounts and concentrations of substances that may be contained in the products or their emissions;

(b) respecting test methods, including methods to assess conformity with the standards;

(b.1) respecting markings that may be displayed on tobacco products;

(c) prescribing information that manufacturers must submit to the Minister about tobacco products and their emissions, including sales data and information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;

(c.1) prescribing information that manufacturers must submit to the Minister about research and development related to tobacco products and their emissions, including information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;

(c.2) respecting requests for supplementary information under subsection 6(2);

(c.3) [Repealed, 2018, c. 9, s. 11]

(d) prescribing the means, including electronic means, by which the information referred to in paragraphs (c) to (c.2) may be submitted to the Minister;

(d.01) prescribing, for the purposes of section 6.1, information that manufacturers must make available to the public, including information referred to in paragraph (c);

(d.02) prescribing, for the purposes of section 6.2, information that the Minister must make available to the public, including information referred to in paragraphs (c) and (c.1);

(d.1) prescribing anything that by this Part is to be prescribed; and

(e) generally for carrying out the purposes of this Part.

Amendment of schedule

7.1 (1) The Governor in Council may, by order, amend Schedule 1 by adding, amending or deleting

- (a) the name or description of an additive or tobacco product; or
- (b) a reference to all tobacco products, with or without exceptions.

Description

(2) An additive or tobacco product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.

PART 1.1 Vaping Products

Product standards

7.2 No manufacturer shall manufacture or sell a vaping product that does not conform with the standards established by the regulations.

Prohibition — manufacture

7.21 No manufacturer shall use an ingredient set out in column 1 of Schedule 2 in the manufacture of a vaping product set out in column 2.

Prohibition — sale

7.22 No manufacturer shall sell a vaping product set out in column 2 of Schedule 2 that contains an ingredient set out in column 1.

Amendment of Schedule 2

7.23 (1) The Governor in Council may, by order, amend Schedule 2 by adding, amending or deleting

- (a) the name or description of an ingredient or vaping product; or
- (b) a reference to all vaping products, with or without exceptions.

Description

(2) An ingredient or vaping product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.

Operation of amendments suspended

(3) An order made under subsection (1) may provide that the operation of the amendments to Schedule 2 is suspended with respect to retailers for a period of 30 days after the day on which the order comes into force.

Consequences of suspension

(4) During the period in which the operation of the amendments is suspended with respect to retailers,

(a) Schedule 2, as it read immediately before the coming into force of the order, continues to apply with respect to retailers; and

(b) no other amendment to Schedule 2 is to come into force.

Information required from manufacturer

7.3 (1) Every manufacturer shall submit to the Minister, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions, whether the vaping products are for sale or not.

Supplementary information

(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.

Prohibition

7.4 Subject to the regulations, no manufacturer shall sell a vaping product unless the information required under subsection 7.3(1) with respect to that product is submitted to the Minister.

Public disclosure by manufacturer

7.5 Every manufacturer shall make available to the public, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about vaping products and their emissions.

Public disclosure by Minister

7.6 The Minister shall make available to the public, in the prescribed manner and within the prescribed time, information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions.

Non-application

7.7 Sections 7.5 and 7.6 do not apply in respect of vaping products that have never been for sale in Canada.

Regulations

7.8 The Governor in Council may make regulations

(a) establishing standards respecting the characteristics of vaping products and their emissions, including the functions and the performance of the products, the sensory attributes — such as appearance and shape — of the products and their emissions, and the amounts and concentrations of substances that may be contained in the products or their emissions;

(b) respecting test methods, including methods to assess conformity with the standards;

(c) prescribing information that manufacturers must submit to the Minister about vaping products and their emissions, including sales data and information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;

- (d) prescribing information that manufacturers must submit to the Minister about research and development related to vaping products and their emissions, including information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;
- (e) respecting requests for supplementary information under subsection 7.3(2);
- (f) respecting the prohibition under section 7.4, including providing for the suspension of the sale of a vaping product;
- (g) prescribing the means, including electronic means, by which the information referred to in paragraphs (c) to (e) may be submitted to the Minister;
- (h) prescribing, for the purposes of section 7.5, information that manufacturers must make available to the public, including information referred to in paragraph (c);
- (i) prescribing, for the purposes of section 7.6, information that the Minister must make available to the public, including information referred to in paragraphs (c) and (d);
- (j) prescribing anything that by this Part is to be prescribed; and
- (k) generally for carrying out the purposes of this Part.

PART II Access

Furnishing products to young persons

8 (1) No person shall furnish a tobacco product or vaping product **or nicotine product** to a young person in a public place or in a place to which the public has access.

Defence

(2) A person shall not be found to have contravened subsection (1) if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.

Sending and delivering to young persons

9 (1) No person shall send or deliver a tobacco product or vaping product **or nicotine product** to a young person.

Defence — sender

(2) A person shall not be found guilty of having contravened subsection (1) for having sent a tobacco product or vaping product **of nicotine product** to a young person if it is established that the person

(a) informed the person delivering the product of its nature and of the prohibition on its delivery to a young person; and

(b) instructed the person delivering the product to verify that the person taking delivery of it was at least 18 years of age by asking for and examining a piece of identification issued by a federal

or provincial authority or a foreign government and containing that person's name, photograph, date of birth and signature.

Defence — person making delivery

(3) A person shall not be found guilty of having contravened subsection (1) for having delivered a tobacco product or vaping product to a young person if it is established that the person

(a) verified that the person taking delivery of the product was at least 18 years of age by asking for and examining a piece of identification issued by a federal or provincial authority or a foreign government and containing that person's name, photograph, date of birth and signature; and

(b) believed on reasonable grounds that the piece of identification was authentic.

Tobacco products — interprovincial sending and delivering

9.1 (1) No person shall, for consideration, send or deliver a tobacco product from one province to another unless the sending or delivery is between manufacturers or retailers or is exempted from the application of this section by the regulations.

Advertising an offer

(2) No person shall advertise an offer to send or deliver a tobacco product from one province to another.

Minimum number of products in package

10 (1) No person shall import for sale in Canada, package, distribute or sell cigarettes, little cigars or blunt wraps except in a package that contains at least 20 cigarettes, little cigars or blunt wraps or, if a higher number is prescribed, at least the prescribed number.

Other tobacco products

(2) No person shall import for sale in Canada, package, distribute or sell a tobacco product — other than cigarettes, little cigars or blunt wraps — that is prescribed for the purposes of this subsection, except in a package that contains at least the prescribed portions, number or quantity of the tobacco product.

Vaping products

(3) No person shall import for sale in Canada, package, distribute or sell a vaping product that is prescribed for the purposes of this subsection, except in a package that contains a number or quantity of the vaping product that meets the prescribed requirements.

Self-service display

11 No person, unless exempted by the regulations, shall sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.

Dispensing device

12 No person shall furnish or permit the furnishing of a tobacco product by means of a device that dispenses tobacco products except where the device is in

(a) a place to which the public does not reasonably have access; or

(b) a bar, tavern or beverage room and has a prescribed security mechanism.

Prescription vaping products

13 (1) Subsections 8(1), 9(1) and 10(3) do not apply in respect of

(a) a prescription vaping product; or

(b) a *device*, within the meaning of section 2 of the *Food and Drugs Act*, that is the subject of an authorization issued under that Act authorizing its sale for use with a prescription vaping product.

Definition of *prescription*

(2) In this section, *prescription*, in respect of a vaping product, means

(a) that the product

(i) contains a drug that is set out in the prescription drug list, as amended from time to time, established under subsection 29.1(1) of the *Food and Drugs Act*, or a drug that is part of a class of drugs that is set out in that list, and

(ii) is the subject of an authorization issued under that Act authorizing its sale; or

(b) that the product contains a *controlled substance*, as defined in subsection 2(1) of the *Controlled Drugs and Substances Act*, the sale or provision of which is authorized under that Act.

Regulations

14 The Governor in Council may make regulations

(a) prescribing the documentation that may be used to verify the age of a person for the purposes of subsection 8(2);

(a.1) respecting exemptions to the prohibition under subsection 9.1(1);

(b) prescribing tobacco products for the purposes of subsection 10(2) and prescribing vaping products for the purposes of subsection 10(3);

(c) respecting, for the purposes of subsection 10(3), the number or quantity of a vaping product that a package must contain, including minimum and maximum numbers or quantities;

(d) exempting persons from the application of section 11;

(e) respecting exemptions from the application of section 12;

(f) prescribing anything that by this Part is to be prescribed; and

(g) generally for carrying out the purposes of this Part.

PART III Labelling

Information — sale of tobacco products

15 (1) No manufacturer or retailer shall sell a tobacco product unless the product and the package containing it display, in the prescribed form and manner, the information required by the regulations about the product and its emissions, and about the health hazards and health effects arising from the use of the product and from its emissions.

Information — packaging of tobacco products

No manufacturer shall package a tobacco product unless the product and the package containing it display, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Information — leaflet

(2) If required by the regulations, every manufacturer or retailer shall provide with a tobacco product, in the prescribed form and manner, a leaflet that displays the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

(3) [Repealed, 2018, c. 9, s. 20]

Information — sale of vaping products

15.1 (1) No manufacturer or retailer shall sell a vaping product unless the product and the package containing it display, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Information — manufacture of vaping products

(2) No person shall manufacture a vaping product unless the product displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Information — packaging of vaping products

(3) No person shall package a vaping product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Information — leaflet or tag

(4) If required by the regulations, every manufacturer or retailer shall provide with a vaping product, in the prescribed form and manner, a leaflet or tag that displays the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Attribution

15.2 The information referred to in sections 15 and 15.1 may be attributed to a person or body designated by the regulations if the attribution is made in the prescribed form and manner.

Display of information — tobacco product package

15.3 (1) No manufacturer or retailer shall sell a tobacco product if the package displays information in a manner that is contrary to the regulations.

Provision of information — other

(2) No manufacturer or retailer shall provide, in a manner that is contrary to the regulations, written information with a tobacco product.

For greater certainty

16 For greater certainty, this Part does not affect any obligation of a manufacturer or retailer at law or under an Act of Parliament or of the legislature of a province to warn consumers of the health hazards and health effects arising from the use of tobacco products or vaping products and from their emissions.

Regulations

17 The Governor in Council may make regulations

(a) respecting the information that must appear on tobacco products and tobacco product packages and in leaflets about tobacco products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions;

(a.1) respecting the information that must appear on vaping products or on vaping product packages and in leaflets or on tags about vaping products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions;

(a.2) respecting, for the purposes of section 15.3, the manner of displaying or providing information, including the form and placement of the information;

(b) prescribing anything that by this Part is to be prescribed; and

(c) generally for carrying out the purposes of this Part.

PART IV Promotion

Definition of *promotion*

18 (1) In this Part, *promotion* means a representation about a product or service by any means, whether directly or indirectly, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviours about the product or service.

Application of Division 1

(2) Division 1 of this Part does not apply to

(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a tobacco product or tobacco product-related brand element, whatever the mode or form of its expression, if no consideration is given by a manufacturer or retailer, directly or indirectly, for that use or depiction in the work, production or performance;

(b) a report, commentary or opinion in respect of a tobacco product or a brand of tobacco product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the tobacco product or brand in that report, commentary or opinion; or

(c) a promotion by a tobacco grower or a manufacturer that is directed at tobacco growers, manufacturers, persons who distribute tobacco products or retailers but not, either directly or indirectly, at consumers.

Application of Division 2

(3) Division 2 of this Part does not apply to

(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a vaping product or vaping product-related brand element, whatever the mode or form of its expression, if no consideration is given by a manufacturer or retailer, directly or indirectly, for that use or depiction in the work, production or performance;

(b) a report, commentary or opinion in respect of a vaping product or a brand of vaping product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the vaping product or brand in that report, commentary or opinion; or

(c) a promotion by a manufacturer that is directed at manufacturers, persons who distribute vaping products or retailers but not, either directly or indirectly, at consumers.

Application of Division 3

(4) Division 3 of this Part does not apply to

(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a nicotine product or nicotine product-related brand element, whatever the mode or form of its expression, if no consideration is given by a manufacturer or retailer, directly or indirectly, for that use or depiction in the work, production or performance;

(b) a report, commentary or opinion in respect of a nicotine product or a brand of nicotine product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the nicotine product or brand in that report, commentary or opinion; or

DIVISION 1 Tobacco Products

Prohibition

19 No person shall promote a tobacco product or a tobacco product-related brand element, including by means of the packaging, except as authorized by the provisions of this Act or of the regulations.

False promotion

20 (1) No person shall promote a tobacco product, including by means of the packaging, in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the tobacco product or its emissions.

Considerations

(2) The general impression conveyed by a promotion and the literal meaning of any statement contained in a promotion shall be taken into account in determining whether a promotion is made in a manner that is misleading or deceptive with respect to, or is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the tobacco product or its emissions.

Comparison and prohibited elements

20.1 No person shall promote a tobacco product, including by means of the packaging,

(a) in a manner that could cause a person to believe that the product or its emissions are less harmful than other tobacco products or their emissions; or

(b) by using terms, expressions, logos, symbols or illustrations that are prohibited by the regulations.

Testimonials or endorsements

21 (1) No person shall promote a tobacco product through a testimonial or an endorsement, however displayed or communicated, including by means of the packaging.

Depiction of person

(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.

(3) [Repealed, 2018, c. 9, s. 28]

Advertising

22 (1) Subject to this section, no person shall promote a tobacco product by means of advertising that depicts, in whole or in part, a tobacco product, its package or a tobacco product-related brand element or that evokes a tobacco product or a tobacco product-related brand element.

Exception

(2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in

(a) a publication that is addressed and sent to an adult who is identified by name; or

(b) [Repealed, 2009, c. 27, s. 11]

(c) signs in a place where young persons are not permitted by law.

Lifestyle advertising

(3) Subsection (2) does not apply to lifestyle advertising or advertising for which there are reasonable grounds to believe that it could be appealing to young persons.

Definitions

(4) The definitions in this subsection apply in this section.

brand-preference advertising means advertising that promotes a tobacco product by means of its brand characteristics. (publicité préférentielle)

information advertising means advertising that provides factual information to the consumer about

(a) a product and its characteristics; or

(b) the availability or price of a product or brand of product. (publicité informative)

lifestyle advertising[Repealed, 2018, c. 9, s. 29]

Packaging

23 (1) No person shall package a tobacco product in a manner that is contrary to the provisions of this Act or of the regulations.

Prohibition — sale

(2) No person shall sell a tobacco product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.

Prohibited additives — packaging

23.1 (1) No person shall package a tobacco product set out in column 2 of Schedule 1 in a manner, including by means of a brand element, that could cause a person to believe that it contains an additive set out in column 1.

Prohibition — sale

(2) No person shall sell a tobacco product set out in column 2 of Schedule 1 that is packaged in a manner prohibited by subsection (1).

Prohibition — vaping product-related brand element

23.2 (1) No person shall display a vaping product-related brand element on the package of a tobacco product.

Prohibition — sale

(2) No person shall sell a tobacco product if a vaping product-related brand element is displayed on its package.

Functions and sensory attributes

23.3 No person shall promote or sell a device that is a tobacco product or a part that may be used with such a device, whether or not the device or part contains tobacco, if the device or part has an appearance, shape or other sensory attribute or a function for which there are reasonable grounds to believe that it could make the device or part appealing to young persons.

Sponsorship promotion

24 (1) No person shall promote a tobacco product-related brand element or the name of a tobacco product manufacturer in a manner that is likely to create an association between the brand element or the name and a person, entity, event, activity or permanent facility.

Promotional material

(2) No person shall use, directly or indirectly, a tobacco product-related brand element or the name of a tobacco product manufacturer in the promotional material related to a person, entity, event, activity or permanent facility.

Name of facility

25 No person shall display a tobacco product-related brand element or the name of a tobacco product manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the facility is used for a sports or cultural event or activity.

Accessories

26 (1) Subject to the regulations, a manufacturer or retailer may sell an accessory that displays a tobacco product-related brand element.

Promotion

(2) No person shall promote an accessory that displays a tobacco product-related brand element except in the prescribed manner and form and in a publication or place described in paragraphs 22(2)(a) and (c).

Brand element — thing or service

27 No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a thing, other than a tobacco product or an accessory, or is used with a service, and

(a) the thing or service is associated with young persons;

(b) there are reasonable grounds to believe that the thing or service could be appealing to young persons; or

(c) the thing or service is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Other things and services

28 (1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a thing, other than a tobacco product or an accessory, or is used with a service, and the thing or service does not fall within the criteria described in paragraphs 27(a) to (c).

Promotion

(2) Subject to the regulations, a person may promote a thing, other than a tobacco product or an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, if the thing or service does not fall within the criteria described in paragraphs 27(a) to (c).

Sales promotions

29 No manufacturer or retailer shall

(a) provide or offer to provide any consideration, for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest;

(b) furnish or offer to furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or

(c) furnish or offer to furnish an accessory that displays a tobacco product-related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.

Point of sale display of tobacco products

30 (1) Subject to the regulations, a person may display, at the point of sale, a tobacco product or an accessory that displays a tobacco product-related brand element.

Signs

(2) A retailer of tobacco products may post, subject to the regulations, signs at the point of sale that indicate the availability of tobacco products and their price.

For greater certainty

(3) For greater certainty, subsection (1) does not authorize the display of a tobacco product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.

DIVISION 2 Vaping Products

Advertising appealing to young persons

30.1 No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of advertising if there are reasonable grounds to believe that the advertising could be appealing to young persons.

Lifestyle advertising

30.2 No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of lifestyle advertising.

Testimonials or endorsements

30.21 (1) No person shall promote a vaping product through a testimonial or an endorsement, however displayed or communicated, including by means of the packaging.

Depiction of person

(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.

Sponsorship promotion

30.3 (1) No person shall promote a vaping product-related brand element or the name of a vaping product manufacturer in a manner that is likely to create an association between the brand element or the name and a person, entity, event, activity or permanent facility.

- **Promotional material**

(2) No person shall use, directly or indirectly, a vaping product-related brand element or the name of a vaping product manufacturer in the promotional material related to a person, entity, event, activity or permanent facility.

Name of facility

30.4 No person shall display a vaping product-related brand element or the name of a vaping product manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the facility is used for a sports or cultural event or activity.

Functions and sensory attributes

30.41 No person shall promote or sell a vaping product that has an appearance, shape or other sensory attribute or a function for which there are reasonable grounds to believe that it could make the product appealing to young persons.

False promotion

30.42 (1) No person shall promote a vaping product, including by means of the packaging,

(a) in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions;

(b) by using terms, expressions, logos, symbols or illustrations that are prohibited by the regulations; or

(c) by using, in a manner that is contrary to the regulations, prescribed terms, expressions, logos, symbols or illustrations.

Considerations

(2) The general impression conveyed by a promotion and the literal meaning of any statement contained in a promotion shall be taken into account in determining whether a promotion is made in a manner that is misleading or deceptive with respect to, or is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions.

Health benefits

30.43 (1) Subject to subsection (3) and the regulations, no person shall promote a vaping product, including by means of the packaging, in a manner that could cause a person to believe that health benefits may be derived from the use of the product or from its emissions.

Comparisons

(2) Subject to subsection (3) and the regulations, no person shall promote a vaping product, including by means of the packaging, by comparing the health effects arising from the use of the product or from its emissions with those arising from the use of a tobacco product or from its emissions.

Exception

(3) Subsections (1) and (2) do not apply in respect of a vaping product that is the subject of an authorization, including a licence, issued under the *Food and Drugs Act* authorizing its sale.

Discouraging tobacco cessation

30.44 No person shall promote a vaping product, including by means of the packaging, if there are reasonable grounds to believe that the promotion could discourage tobacco cessation or encourage the resumed use of tobacco products.

Packaging

30.45 (1) No person shall package a vaping product in a manner that is contrary to the provisions of this Act or of the regulations.

Prohibition — sale

(2) No person shall sell a vaping product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.

Indication or illustration

30.46 (1) No person shall display on a vaping product or on its package an indication or illustration, including a brand element, that could cause a person to believe that the product is flavoured if there are reasonable grounds to believe that the indication or illustration could be appealing to young persons.

Prohibition — sale

(2) No person shall sell a vaping product if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.

Prohibited ingredients

30.47 (1) No person shall promote a vaping product set out in column 2 of Schedule 2, including by means of the packaging, through an indication or illustration, including a brand element, that could cause a person to believe that the product contains an ingredient set out in column 1.

Prohibition — sale

(2) No person shall sell a vaping product set out in column 2 of Schedule 2 if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.

Flavours

30.48 (1) No person shall promote a vaping product set out in column 2 of Schedule 3, including by means of the packaging, through an indication or illustration, including a brand element, that could cause a person to believe that the product has a flavour set out in column 1.

Prohibition — sale

(2) No person shall sell a vaping product set out in column 2 of Schedule 3 if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.

Amendment of Schedule 3

30.49 (1) The Governor in Council may, by order, amend Schedule 3 by adding, amending or deleting

- (a) the name or description of a flavour or vaping product; or
- (b) a reference to all vaping products, with or without exceptions.

Description

(2) A flavour or vaping product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.

Operation of amendments suspended

(3) An order made under subsection (1) may provide that the operation of the amendments to Schedule 3 is suspended with respect to retailers for a period of 30 days after the day on which the order comes into force.

Consequences of suspension

(4) During the period in which the operation of the amendments is suspended with respect to retailers,

(a) Schedule 3, as it read immediately before the coming into force of the order, continues to apply with respect to retailers; and

(b) no other amendment to Schedule 3 is to come into force.

Giving or offering to give

30.5 Subject to the regulations, no manufacturer or retailer shall give or offer to give

(a) a vaping product; or

(b) a thing that displays a vaping product-related brand element if

(i) the thing is associated with young persons,

(ii) there are reasonable grounds to believe that the thing could be appealing to young persons, or

(iii) the thing is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Sales promotions — offering consideration

30.6 (1) No manufacturer or retailer shall, in a place to which young persons have access,

(a) offer to provide any consideration, for the purchase of a vaping product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest; or

(b) offer to furnish a vaping product in consideration of the purchase of a product or service or the performance of a service.

Sales promotions — providing consideration

(2) No manufacturer or retailer shall, in a place other than a retail establishment where vaping products are ordinarily sold,

(a) provide any consideration, for the purchase of a vaping product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest; or

(b) furnish a vaping product in consideration of the purchase of a product or service or the performance of a service.

Advertising — required information

30.7 No person shall promote a vaping product or a vaping product-related brand element by means of advertising unless it conveys, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Advertising — regulations

30.701 No person shall promote a vaping product or a vaping product-related brand element by means of advertising done in a manner that is contrary to the regulations.

Tobacco product-related brand element

30.71 No person shall furnish or promote a vaping product if a tobacco product-related brand element is displayed on the vaping product, on its package or in the advertising of the vaping product.

Point of sale promotion

30.8 No person shall promote, at the point of sale, a vaping product or a vaping product-related brand element, including by means of the packaging, in a manner that is contrary to the regulations.

DIVISION 3 Nicotine Products

Advertising appealing to young persons

30.9.1 No person shall promote a nicotine product, a nicotine product-related brand element or a thing that displays a nicotine product-related brand element by means of advertising if there are reasonable grounds to believe that the advertising could be appealing to young persons

Lifestyle advertising

30.9.2 No person shall promote a nicotine product, a nicotine product-related brand element or a thing that displays a nicotine product-related brand element by means of lifestyle advertising

Giving or offering to give

30.9.3 Subject to the regulations, no manufacturer or retailer shall give or offer to give (a) a nicotine product; or (b) a thing that displays a nicotine product-related brand element if (i) the thing is associated with young persons, (ii) there are reasonable grounds to believe that the thing could be appealing to young persons, or (iii) the thing is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring

Advertising and promotion

30.9.4 (1) No person shall promote a nicotine product or a nicotine product-related brand element, including at the point of sale, by means of advertising done in a manner that is contrary to Schedule 5.

(2) The Governor in Council may, by order, amend Schedule 5.

DIVISION 4 Miscellaneous Provisions

Communication media

31 (1) No person shall, on behalf of another person, with or without consideration, publish, broadcast or otherwise disseminate any promotion that is prohibited by this Part.

Exception

(2) Subsection (1) does not apply to the distribution for sale of an imported publication or the retransmission of radio or television broadcasts that originate outside Canada.

Foreign media

(3) No person in Canada shall, by means of a publication that is published outside Canada, a broadcast that originates outside Canada or any communication other than a publication or broadcast that originates outside Canada, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco product-related brand element or a vaping product-related brand element in a manner that is contrary to this Part.

Report to Minister

32 (1) Every manufacturer shall submit to the Minister, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about any promotion referred to in paragraph 18(2)(c) or (3)(c) and about any promotion referred to in Division 1 or 2.

Supplementary information

(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.

Regulations

33 The Governor in Council may make regulations

(a) respecting the promotion of tobacco products, the use and promotion of tobacco product-related brand elements and the packaging of tobacco products, including the form, manner and conditions of the promotion and packaging, and the promotion of services and things for the purposes of section 28;

(a.1) for the purposes of paragraph 20.1(b), prohibiting the use of terms, expressions, logos, symbols or illustrations in order to prevent the public from being deceived or misled with respect to the health effects or health hazards of tobacco products or their emissions;

(b) respecting the advertising of tobacco products for the purposes of subsection 22(2);

- (c) respecting, for the purposes of subsection 26(1), the manner in which a tobacco product-related brand element may appear on an accessory;
- (d) respecting the display of tobacco products and accessories at the point of sale;
- (e) respecting signs that a retailer may post under subsection 30(2), including the placement of the signs and their number, size and content;
 - (e.1) for the purposes of section 30.42, prohibiting or respecting the use of terms, expressions, logos, symbols or illustrations in order to prevent the public from being deceived or misled with respect to the health effects or health hazards of vaping products or their emissions;
 - (e.2) respecting exceptions to the prohibitions under subsections 30.43(1) and (2);
 - (e.3) respecting, for the purposes of section 30.45, the packaging of vaping products, including by prohibiting the display of terms, expressions, logos, symbols or illustrations on the package that could be appealing to young persons;
- (f) respecting exceptions to the prohibition under section 30.5;
- (g) respecting, for the purposes of section 30.7, the information about vaping products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions that must be conveyed in advertising;
 - (g.1) respecting, for the purposes of section 30.701, the advertising of vaping products and vaping product-related brand elements;
- (h) respecting, for the purposes of section 30.8, the promotion, at the point of sale, of vaping products and vaping product-related brand elements, including their display;
- (i) requiring manufacturers to disclose the particulars of their tobacco product-related and vaping product-related brand elements and promotional activities;
- (j) respecting requests for supplementary information under subsection 32(2);
- (k) prescribing anything that by this Part is to be prescribed; and
- (l) generally for carrying out the purposes of this Part.

PART V Administration and Enforcement

Inspection and Analysis

Designation of inspectors and analysts

34 (1) The Minister may designate any person or class of persons as an inspector or analyst for the purpose of the administration and enforcement of this Act.

Certificate

(2) Every inspector and analyst shall be given a certificate, in a form established by the Minister, attesting to the inspector or analyst's designation.

Certificate to be produced

(3) An inspector entering a place under this Act shall, on request, produce the certificate to the person in charge of that place.

Authority to enter place

35 (1) For a purpose related to verifying compliance with this Act, an inspector may, subject to section 36, enter any place, including a conveyance, in which the inspector believes on reasonable grounds

(a) a tobacco product or vaping product is manufactured, tested, stored, promoted, transported or furnished;

(b) there is anything used in the manufacture, testing, promotion or furnishing of a tobacco product or vaping product; or

(c) there is any information relating to the manufacture, testing, storage, promotion, transporting or furnishing of a tobacco product or vaping product.

Powers of inspector

(2) An inspector may, for the purpose referred to in subsection (1),

(a) examine a tobacco product, vaping product or thing referred to in paragraph (1)(b) that is found in the place;

(b) order any person to produce for examination, in the manner and form requested by the inspector, the tobacco product, vaping product or thing;

(c) open or order any person to open any container or package found in the place that the inspector believes on reasonable grounds contains the tobacco product, vaping product or thing;

(d) take or order any person to take, free of charge, a sample of the tobacco product, vaping product or thing;

(e) conduct any test or analysis or take any measurements;

(f) order any person found in the place to produce for examination or copying any written or electronic information;

(g) take photographs and make recordings and sketches;

(h) order the owner or person having possession, care or control of the tobacco product, vaping product or thing — or of the conveyance — to move it or, for any time that may be necessary, not to move it or to restrict its movement;

(i) order the owner or person in charge of the place or a person who manufactures, tests, stores, promotes, transports or furnishes a tobacco product or vaping product at the place to establish their identity to the inspector's satisfaction;

(j) use or order any person to use a *computer system*, as defined in subsection 342.1(2) of the *Criminal Code*, that is found in the place to examine data that are contained in or available to the computer system, reproduce the data or order any person to reproduce the data in the form of a printout or other intelligible output and remove the output for examination or copying; or

(k) use or order any person to use copying equipment that is found in the place and remove the copies for examination.

Means of telecommunication

(3) For the purposes of subsections (1) and (2), the inspector is considered to have entered a place when they access it remotely by a means of telecommunication.

Limitation — access by means of telecommunication

(4) An inspector who enters remotely, by a means of telecommunication, a place that is not accessible to the public must do so with the knowledge of the owner or person in charge of the place and only for the period necessary for the purpose referred to in subsection (1).

Persons accompanying inspector

(5) The inspector may be accompanied by any person that they believe is necessary to help them exercise their powers or perform their duties or functions under this section.

Entering private property

(6) An inspector and any person accompanying them may enter and pass through private property, other than a dwelling-house on that property, in order to gain entry to a place referred to in subsection (1).

Warrant to enter dwelling-house

36 (1) If the place is a dwelling-house, an inspector may enter it without the occupant's consent only under the authority of a warrant issued under subsection (2).

Authority to issue warrant

(2) On *ex parte* application, a justice of the peace may issue a warrant authorizing the inspector named in the warrant to enter a dwelling-house, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath that

(a) the dwelling-house is a place referred to in subsection 35(1);

(b) entry to the dwelling-house is necessary for a purpose referred to in that subsection; and

(c) entry to the dwelling-house was refused by the occupant or there are reasonable grounds to believe that entry will be refused by, or that consent to entry cannot be obtained from, the occupant.

Use of force

(3) In executing a warrant issued under subsection (2), an inspector may use force only if the use of force has been specifically authorized in the warrant and they are accompanied by a peace officer.

Means of telecommunication

(4) An application for a warrant under subsection (2) may be submitted, and the warrant may be issued, by a means of telecommunication and section 487.1 of the *Criminal Code* applies for those purposes with any necessary modifications.

Certificate of analysis

37 An analyst who has analysed or examined a thing under this Act, or a sample of it, may issue a certificate or report setting out the results of the analysis or examination.

Assistance to inspectors

38 (1) The owner or person in charge of a place referred to in subsection 35(1) and every person found in that place shall give all assistance that is reasonably required to enable the inspector to exercise their powers or perform their duties or functions under this Act, including by providing them with any documents or information, and access to any data, that they may reasonably require for that purpose and by complying with any order made by the inspector under subsection 35(2) or paragraph 39(2)(b).

Obstruction

(2) No person shall obstruct or hinder, or make a false or misleading statement either orally or in writing to, an inspector who is exercising their powers or performing their duties or functions under this Act.

Seizure and Restoration

Seizure

39 (1) An inspector may seize any thing — including a tobacco product or vaping product — found in a place referred to in subsection 35(1), or a conveyance referred to in that subsection, that they have reasonable grounds to believe was used in the contravention of this Act or is something in relation to which the Act was contravened.

Storage

(2) An inspector who seizes a thing or a conveyance may

(a) on notice to and at the expense of its owner or the person having possession, care or control of it at the time of its seizure, store it or move it; or

(b) order its owner or the person having possession, care or control of it at the time of its seizure to, at their expense, store it or move it.

Interference

(3) Unless authorized by an inspector, no person shall remove, alter or interfere in any way with any thing or conveyance seized.

Application for restoration

40 (1) Any person from whom a thing or conveyance was seized may, within 60 days after the date of seizure, apply to a provincial court judge within whose jurisdiction the seizure was made for an order of restoration, if the person sends a notice containing the prescribed information to the Minister within the prescribed time and in the prescribed manner.

Order of restoration

(2) The provincial court judge may order that the thing or conveyance be restored immediately to the applicant if, on hearing the application, the judge is satisfied

- (a) that the applicant is entitled to possession of the thing or conveyance seized; and
- (b) that the thing or conveyance seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

Order of later restoration

(3) If, on hearing an application made under subsection (1), the provincial court judge is satisfied that the applicant is entitled to possession of the thing or conveyance seized but is not satisfied with respect to the matters mentioned in paragraph (2)(b), the judge may order that the thing or conveyance seized be restored to the applicant

- (a) on the expiration of one hundred and eighty days after the date of the seizure if no proceedings in respect of an offence under this Act have been commenced before that time; or
- (b) on the final conclusion of any such proceedings, in any other case.

No restoration where forfeiture by consent

(4) The provincial court judge shall not make an order under this section for restoration of a thing or conveyance if it has been forfeited by consent under subsection 41(3).

Forfeiture

41 (1) If no application has been made under subsection 40(1) for the restoration of a thing or conveyance seized under this Act within 60 days after the date of the seizure, or an application has been made but on the hearing of the application no order of restoration is made, the thing or conveyance is forfeited to Her Majesty in right of Canada.

Forfeiture on conviction

(2) If a person has been convicted of an offence under this Act, any thing or conveyance seized under this Act by means of or in respect of which the offence was committed is forfeited to Her Majesty in right of Canada.

Forfeiture with consent

(3) If an inspector has seized a thing or conveyance and the owner or the person in whose possession it was at the time of seizure consents in writing to its forfeiture, the thing or conveyance is forfeited to Her Majesty in right of Canada.

Disposal

(4) A seized thing or conveyance that is forfeited may be disposed of, as the Minister directs, at the expense of its owner or the person who was entitled to possess it at the time of its seizure.

Recovery of costs

41.1 (1) Her Majesty in right of Canada may recover, as a debt due to Her Majesty in right of Canada, any costs incurred by Her Majesty in right of Canada in relation to anything required or authorized under section 39 or subsection 41(4), including the storage, movement or disposal of a thing or conveyance.

Time limit

(2) Proceedings to recover a debt due to Her Majesty in right of Canada under subsection (1) shall not be commenced later than five years after the day on which the debt became payable.

Certificate of default

41.2 (1) Any debt that may be recovered under subsection 41.1(1) in respect of which there is a default of payment, or the part of any such debt that has not been paid, may be certified by the Minister.

Judgment

(2) On production to the Federal Court, a certificate made under subsection (1) shall be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in that Court for a debt of the amount specified in the certificate and all reasonable costs and charges attendant in the registration of the certificate.

Regulations

Regulations

42 The Governor in Council may make regulations

(a) respecting the powers and duties of inspectors and analysts;

(b) respecting the taking of samples;

(b.1) respecting the costs in relation to anything required or authorized under section 39 or subsection 41(4);

(c) prescribing anything that by this Part is to be prescribed; and

(d) generally for carrying out the purposes of this Part.

PART V.1 Miscellaneous Provisions

42.1 [Repealed, 2018, c. 9, s. 52]

Food and Drugs Act

42.2 (1) The Governor in Council may make regulations providing that this Act or any provision of this Act does not apply in respect of some or all of the vaping products that are regulated under the *Food and Drugs Act* or that contain a *controlled substance*, as defined in subsection 2(1) of the *Controlled Drugs and Substances Act*.

For greater certainty

(2) For greater certainty, the regulations may distinguish between vaping products on the basis of type of authorization, including type of licence, issued under the *Food and Drugs Act*, or on the basis of type of licence, permit, authorization or exemption issued or granted under the *Controlled Drugs and Substances Act*.

Trademarks

42.3 (1) Despite the *Trademarks Act*, the registration of a trademark shall not be held invalid on the basis of paragraph 18(1)(b) or (c) of that Act as a result of compliance with this Act.

For greater certainty

(2) For greater certainty, the absence of use of a trademark as a result of compliance with this Act constitutes special circumstances that excuse the absence of use for the purposes of the *Trademarks Act*.

Regulations

42.4 The Governor in Council may make regulations

- (a) prescribing anything that by this Part is to be prescribed; and
- (b) generally for carrying out the purposes of this Part.

Incorporation by reference — limitation removed

42.5 The limitation set out in paragraph 18.1(2)(a) of the *Statutory Instruments Act* to the effect that a document must be incorporated as it exists on a particular date does not apply to the powers to make regulations under sections 7, 7.8, 14, 17, 33, 42 and 42.4.

PART VI Offences and Punishment

Product and promotion offences — manufacturer

43 (1) Every manufacturer who contravenes section 5, 7.2 or 19 is guilty of an offence and liable

- (a) on summary conviction to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding one year, or to both; or
- (b) on conviction on indictment to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding two years, or to both.

Promotion offences — other persons

(2) Every person, other than a manufacturer, who contravenes section 19 is guilty of an offence and liable on summary conviction to a fine not exceeding \$500,000.

Additives, ingredients and markings — manufacturer

43.1 Every manufacturer who contravenes subsection 5.1(1), section 5.2, subsection 5.3(1) or section 7.21 or 7.22 is guilty of an offence and liable on summary conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.

Markings — other persons

43.2 Every person, other than a manufacturer, who contravenes subsection 5.3(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.

Summary offence

44 Every person who contravenes subsection 6(1) or (2), section 6.1, subsection 7.3(1) or (2), section 7.5, subsection 10(1), (2) or (3) or 26(1) or (2), section 30.7 or subsection 31(1) or (3), 32(1) or (2) or 38(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both.

Prohibited sale

44.1 Every manufacturer who contravenes section 7.4 is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both.

Sales to young persons, promotions

45 Every person who contravenes subsection 8(1) or 9(1) or section 11 or 12, or every retailer who contravenes section 29 or 30.5 or subsection 30.6(1) or (2), is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine not exceeding \$3,000; and

(b) for a subsequent offence, to a fine not exceeding \$50,000.

Offence by retailer

46 (1) Every retailer who contravenes subsection 15(1) or (2), 15.1(1) or (4) or 15.3(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.

Offence by manufacturer

(2) Every manufacturer who contravenes subsection 15(1), (1.1) or (2), 15.1(1) or (4) or 15.3(1) or (2), section 29 or 30.5 or subsection 30.6(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding two years, or to both.

Offence

(3) Every person who contravenes subsection 15.1(2) or (3) is guilty of an offence and liable on summary conviction to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding two years, or to both.

General offence

47 Every person who contravenes subsection 9.1(1) or (2) or 20(1), section 20.1, subsection 21(1), 22(1), 23(1) or (2), 23.1(1) or (2) or 23.2(1) or (2), section 23.3, subsection 24(1) or (2), section 25, 27, 30.1 or 30.2, subsection 30.21(1) or 30.3(1) or (2), section 30.4 or 30.41, subsection 30.42(1) or 30.43(1) or (2), section 30.44, subsection 30.45(1) or (2), 30.46(1) or (2), 30.47(1) or (2) or 30.48(1) or (2) or section 30.701 or 30.71 is guilty of an offence and liable on summary conviction to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding two years, or to both.

Where no other penalty

48 Every person who contravenes a provision of this Act or the regulations for which no other penalty is provided in this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000.

Due diligence defence

48.1 A person is not to be found guilty of an offence under this Act if they establish that they exercised due diligence to prevent the commission of the offence.

Continuing offence

49 A person who commits or continues an offence under this Act on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Offence by director or officer of corporation

50 Where a corporation commits an offence under this Act, any director or officer of the corporation who authorized or acquiesced in the offence is guilty of an offence and liable on conviction to the penalty provided for by this Act in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted.

Limitation period

51 No prosecution for a summary conviction offence under this Act may be instituted after two years after the time when the subject-matter of the proceedings arose.

Venue

52 A prosecution for an offence under this Act may be instituted, heard, tried and determined by a court in any jurisdiction in which the accused carries on business, regardless of where the subject-matter of the prosecution arose.

Exception need not be pleaded

53 (1) No exception, exemption, excuse or qualification prescribed by law is required to be set out or negated, as the case may be, in an information or indictment for an offence under this Act or under section 463, 464 or 465 of the *Criminal Code* in respect of an offence under this Act.

Proof of exemption

(2) In a prosecution for an offence referred to in subsection (1), the burden of proving that an exception, exemption, excuse or qualification prescribed by law operates in favour of the accused is on the accused and the prosecutor is not required, except by way of rebuttal, to prove that it does not operate in favour of the accused, whether or not it is set out in the information or indictment.

Offence by employee or agent

54 In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent its commission.

Certified copies and extracts

55 In a prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified by the inspector to be a true copy is admissible in evidence and is, in the absence of evidence to the contrary, proof of its contents.

Certificate or report of analyst as proof

56 (1) Subject to subsections (2) and (3), a certificate or report purporting to be signed by an analyst stating that the analyst has analysed anything to which this Act applies and stating the results of the analysis, is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

Notice

(2) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate or report.

Attendance of analyst

(3) The party against whom the certificate or report is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.

Evidentiary presumptions

57 In a prosecution for a contravention of this Act,

(a) information on a package indicating that it contains a tobacco product or vaping product is, in the absence of evidence to the contrary, proof that the package contains that product; and

(b) a name or address on a package purporting to be the name or address of the person by whom the tobacco product or vaping product was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

Additional fine

58 If an offender has been convicted of an offence under this Act and the court is satisfied that as a result of the commission of the offence the offender acquired any monetary benefits or that monetary benefits accrued to the offender, the court may order the offender to pay, despite the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.

Orders of court

59 When the court is sentencing an offender who has been convicted of an offence under this Act, in addition to any other punishment that may be imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

(a) prohibiting the offender from doing any act or engaging in any activity that is likely to result in the continuation or repetition of the offence;

(b) prohibiting the offender from selling tobacco products and vaping products for a period of not more than one year, in the case of a subsequent offence for the contravention of subsection 8(1) or section 11, 12, 29, 30.5 or 30.6;

(c) directing the offender to publish, in the manner directed by the court, the facts relating to the commission of the offence;

- (d) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with an order made pursuant to this section;
- (e) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the act or omission that constituted the offence; and
- (f) directing the offender to pay an amount for the purposes of conducting research into any matters relating to tobacco products and vaping products that the court considers appropriate.

PART VII Agreements

Administrative agreements

60 (1) The Minister may enter into agreements with provinces or other bodies respecting the administration and enforcement of this Act or any provision of this Act, including the designation of provincial or other officials and bodies as inspectors under this Act and the appointment of federal officials as inspectors under provincial legislation in respect of tobacco and vaping products.

Equivalency agreements

(2) The Minister may enter into equivalency agreements with a province where there are in force, under the laws of that province, provisions that are equivalent to the provisions of this Act.

Order

(3) The Governor in Council may, on the recommendation of the Minister, by order, declare that certain provisions of this Act or the regulations, other than those creating an absolute prohibition, do not apply within a province in which an equivalency agreement is in force.

Table in Parliament

(4) A copy of an equivalency agreement in respect of which an order is made under subsection (3) must be tabled in each House of Parliament within the first 15 sitting days of that House after the order is made.

PART VII.1 Review of the Act

Review of the Act

60.1 (1) The Minister must, three years after the day on which this section comes into force and every two years after that, undertake a review of the provisions and operation of this Act.

Report to Parliament

(2) The Minister must, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

PART VIII Consequential Amendments, Repeals and Coming into Force

Consequential Amendments

61 to 63 [Amendments]

Repeals

64 and 65 [Repeals]

Coming into Force

Subsections 24(2) and (3)

[Footnote*66](#) (1) Subsections 24(2) and (3) come into force on October 1, 1998 or on any earlier day that the Governor in Council may fix by order.

- o [Return to footnote*](#)[Note: Subsections 24(2) and (3) in force October 1, 1998.]

Application delayed — sponsorship before April 25, 1997

(2) If a tobacco product-related brand element was displayed, at any time between January 25, 1996 and April 25, 1997, in promotional material that was used in the sponsorship of an event or activity that took place in Canada, subsections 24(2) and (3) do not apply until

(a) October 1, 2000 in relation to the display of a tobacco product-related brand element in promotional material that is used in the sponsorship of that event or activity or of a person or entity participating in that event or activity; and

(b) October 1, 2003 in relation to the display referred to in paragraph (a) on the site of the event or activity for the duration of the event or activity or for any other period that may be prescribed.

Promotional material

(3) Subsections 24(2) and (3) apply beginning on October 1, 2000 and ending on September 30, 2003 to prohibit the furnishing to the public, on the site of an event or activity to which paragraph (2)(b) applies, of promotional material that displays a tobacco product-related brand element otherwise than in conformity with subsection 24(2).

SCHEDULE 1(Sections 5.1, 5.2, 7.1 and 23.1)

Prohibited Additives

| Item | Column 1 | Column 2 |
|------|--|---|
| 1 | Additives that have flavouring properties or that enhance flavour (other than those set out in Column 1 of item 1.2), including <ul style="list-style-type: none">– additives identified as flavourings by the Joint FAO/WHO Expert Committee on Food Additives in the Committee’s evaluations, as published from time to time in the WHO Technical Report Series– additives identified as generally recognized as safe (GRAS) flavouring substances by the | Except those that are manufactured or sold for export, the following: <ul style="list-style-type: none">(1) Cigarettes(2) Cigars that have a wrapper that is not fitted in spiral form, cigars that have tipping paper and little cigars(3) Blunt wraps |

| | Column 1 | Column 2 |
|------|---|---|
| Item | Additive | Tobacco Product |
| | <p>Flavor and Extract Manufacturers Association (FEMA) Expert Panel in its lists of GRAS substances referred to as “GRAS 3” to “GRAS 29” and subsequent lists of GRAS substances, as published from time to time, if any</p> <p>The following additives are excluded:</p> <ul style="list-style-type: none"> – benzoic acid (CAS 65-85-0) and its salts – butylated hydroxytoluene (CAS 128-37-0) – carboxymethyl cellulose (CAS 9000-11-7) – citric acid (CAS 77-92-9) and its salts – ethanol (CAS 64-17-5) – polyoxyethylene sorbitan monolaurate (CAS 9005-64-5) – fumaric acid (CAS 110-17-8) – glycerol (CAS 56-81-5) – guar gum (CAS 9000-30-0) – n-propyl acetate (CAS 109-60-4) – paraffin wax (CAS 8002-74-2) – propylene glycol (CAS 57-55-6) – glycerol esters of wood rosin (CAS 8050-31-5) – sodium acetate anhydrous (CAS 127-09-3) – sodium alginate (CAS 9005-38-3) – sorbic acid (CAS 110-44-1) and its salts – triacetin (CAS 102-76-1) – tributyl acetylcitrate (CAS 77-90-7) | |
| 1.1 | The prohibited additives referred to in item 1, excluding those that impart a flavour that is generally attributed to port, wine, rum or whisky | Cigars that have a wrapper fitted in spiral form and that weigh more than 1.4 g but not more than 6 g, excluding the weight of any mouthpiece or tip, other than those referred to in item 1 and those that are manufactured or sold for export |
| 1.2 | Menthol, including l-menthol, and menthone, including l-menthone | Tobacco products, except those that are manufactured or sold for export |
| 2 | Amino acids | Except those that are manufactured or sold for export, the following: |

| | Column 1 | Column 2 |
|------|--|--|
| Item | Additive | Tobacco Product |
| | | (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 3 | Caffeine | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 4 | Colouring agents, excluding those used to whiten filters, tipping paper or the paper covering rolled tobacco or to imitate a cork pattern on tipping paper | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Tubes (3) Tobacco products that are made in whole or in part of tobacco, rolled in paper and intended for use with a device |
| 4.1 | Colouring agents | Except those that are manufactured or sold for export, the following: (1) Blunt wraps (2) Leaf tobacco |
| 4.2 | Colouring agents, excluding those used to whiten mouthpieces or tips or to render them the colour drab brown (Pantone 448) | Subject to items 4.3 and 4.4, cigars, except the following: (1) Cigars that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (2) Cigars that are manufactured or sold for export |
| 4.3 | Colouring agents, excluding those used to whiten plug wrap paper, filters or tipping paper, to render tipping paper the colour drab brown (Pantone 448), to imitate a cork pattern on tipping paper or to whiten mouthpieces or tips or to render them the colour drab brown (Pantone 448) | Little cigars, except those that are manufactured or sold for export |
| 4.4 | Colouring agents, excluding those used to render tipping paper the colour drab brown (Pantone 448), to whiten mouthpieces or tips or to render them the colour drab brown (Pantone 448) | Cigars that have tipping paper, except those that are manufactured or sold for export and little cigars |

| | Column 1 | Column 2 |
|------|---|--|
| Item | Additive | Tobacco Product |
| 4.5 | Colouring agents, excluding those used to render tobacco products the colour drab brown (Pantone 448) | Tobacco products that are made in whole or in part of tobacco and intended for use with a device but that are not rolled in paper, except those that are manufactured or sold for export |
| 4.6 | Colouring agents, excluding whitening agents | Except those that are manufactured or sold for export, the following: (1) Filters (2) Papers intended for use with a tobacco product |
| 4.7 | Colouring agents, excluding those used to blacken the thread around the circumference of a bidi | Bidis, except those that are manufactured or sold for export |
| 5 | Essential fatty acids | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 6 | Fruits, vegetables or any product obtained from the processing of a fruit or vegetable, excluding activated charcoal and starch | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 7 | Glucuronolactone | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 8 | Probiotics | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |

| | Column 1 | Column 2 |
|------|---|--|
| Item | Additive | Tobacco Product |
| 9 | Spices, seasonings and herbs (other than those set out in Column 1 of item 9.1) | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 9.1 | Cloves | Tobacco products, except those that are manufactured or sold for export |
| 10 | Sugars and sweeteners, excluding starch | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 11 | Taurine | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 12 | Vitamins | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |
| 13 | Mineral nutrients, excluding those necessary to manufacture the tobacco product | Except those that are manufactured or sold for export, the following: (1) Cigarettes (2) Little cigars (3) All other cigars, except those that weigh more than 6 g excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper (4) Blunt wraps |

- **Note 1:**

In column 1, **FAO** means Food and Agriculture Organization of the United Nations; **WHO** means World Health Organization; **CAS** means Chemical Abstracts Service registry number.

- **Note 2:**

In column 2, **wrapper fitted in spiral form** means a wrapper of a cigar that is fitted with an acute angle of at least 30° to the longitudinal axis of the cigar.

SCHEDULE 2(Sections 7.21, 7.22, 7.23 and 30.47)

Prohibited Ingredients

| | Column 1 | Column 2 |
|------|-----------------------|---|
| Item | Ingredient | Vaping Product |
| 1 | Amino acids | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 2 | Caffeine | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 3 | Colouring agents | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 4 | Essential fatty acids | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 5 | Glucuronolactone | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 6 | Probiotics | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 7 | Taurine | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 8 | Vitamins | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |
| 9 | Mineral nutrients | Vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export |

- **Note:**

In column 2, **prescription** has the same meaning as in subsection 13(2).

SCHEDULE 3(Sections 30.48 and 30.49)

Flavours

| | Column 1 | Column 2 |
|------|---------------|---|
| Item | Flavour | Vaping Product |
| 1 | Confectionery | Vaping products, except prescription vaping products and vaping products that are manufactured or sold for export |
| 2 | Dessert | Vaping products, except prescription vaping products and vaping products that are manufactured or sold for export |
| 3 | Cannabis | Vaping products, except vaping products that are manufactured or sold for export |
| 4 | Soft drink | Vaping products, except vaping products that are manufactured or sold for export |
| 5 | Energy drink | Vaping products, except vaping products that are manufactured or sold for export |

- **Note:**

In column 2, *prescription* has the same meaning as in subsection 13(2).

SCHEDULE 4 (Section 2)

Definition of Nicotine Product

1(a) A nicotine product includes products first authorized for sale under the Natural Health Products Regulations within the past 48 months.

SCHEDULE 5 (Section 30.9)¹

Advertising and Point of Sale Promotion of Nicotine Products

ADVERTISING

Advertising – young person

2 (1) For the purposes of section 30.9.1 of the Act, a nicotine product or a nicotine product-related brand element must not be promoted by means of advertising done in a manner that allows the advertising to be seen or heard by young persons.

Exceptions

(2) Subsection (1) does not apply to the following types of advertising:

(a) subject to paragraph (b), visual advertising that is located at the point of sale, if the conditions set out in paragraphs 4(1)(a) to (d) are met;

¹ This section provides the same approach to restricting the advertising and promotion of nicotine products as is currently provided for vaping products in the *Vaping Product Promotion Regulations*.

(b) advertising on a sign that is located at a point of sale that is a retail establishment where nicotine products are sold if

(i) the conditions set out in paragraphs 5(1)(a) to (e) are met, or

(ii) the sign indicates only the availability at the establishment and price of nicotine products and provincial legislation that governs the retail establishment applies to signs promoting nicotine products;

(c) advertising in a publication that is addressed and sent to an adult who is identified by name; and

(d) advertising in a publication that is provided on request to an adult at a point of sale that is a retail establishment where nicotine products are sold.

POINT OF SALE PROMOTION

Display – nicotine product and package

3 (1) For the purposes of section 30.9.4 of the Act, a nicotine product or its package must not be displayed, at the point of sale, in a manner that allows it to be seen by young persons.

Visual advertising — general conditions

4 (1) For the purposes of section 30.9.4 of the Act, a nicotine product or a nicotine product-related brand element must not, subject to subsection (2) and section 5, be promoted by means of a visual advertisement at the point of sale unless the following conditions are met:

(a) only one such advertisement is located at the point of sale;

(b) the advertisement indicates only the availability at the point of sale and price of nicotine products;

(c) the advertisement does not include any visual, sound or other effects that are likely to draw attention to it; and

(d) the advertisement uses only black characters on a white background.

Exception — provincial legislation

(2) Subsection (1) does not apply if provincial legislation that governs the retail establishment applies to signs promoting nicotine products.

Exception — visibility

(3) Subsection (1) does not apply in respect of advertising on a sign and that is done in a manner that does not allow the advertising to be seen by young persons.

Signs — specific conditions

5 (1) For the purposes of section 30.9.4 of the Act, a nicotine product or a nicotine product-related brand element must not, subject to subsections (2) and (3), be promoted by means of advertising on a sign that is located at a point of sale that is a retail establishment where nicotine products are sold, unless the following conditions are met:

- (a) the sign indicates only the availability at the establishment and price of nicotine products;
- (b) only one such sign is located at the establishment;
- (c) the sign does not include any visual, sound or other effects that are likely to draw attention to it;
- (d) the sign uses only black characters on a white background; and
- (e) the sign is rectangular and does not exceed 3 600 cm² in area.

Exception — provincial legislation

(2) Subsection (1) does not apply if provincial legislation that governs the retail establishment applies to signs promoting nicotine products.

Exception — visibility

(3) Subsection (1) does not apply in respect of advertising on a sign and that is done in a manner that does not allow the advertising to be seen by young persons.