
B.C.'s E-Substances Regulation

RETAILERS' GUIDE

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Contents

B.C.'S E-SUBSTANCES REGULATION.	3
1 SUMMARY OF IMPORTANT DATES	4
2 PRESCRIBED HEALTH HAZARDS AND PROHIBITED AND RESTRICTED ACTIVITIES	5
3 SALES	6
4 ADVERTISING	9
6 NOTICES REQUIRED BEFORE SALE.	8
7 REPORTING	9
	10

B.C.'s E-Substances Regulation

Purpose

Government has enacted a new regulation and regulatory amendments in relation to vapour products under the *Public Health Act* (PHA) and the *Tobacco and Vapour Products Control Act* (TVPCA). These regulatory changes include:

- a new E-Substances Regulation (ESR);
- amendments to the Tobacco and Vapour Products Control Regulation (TVPCR); and,
- amendments to the Health Hazards Regulation (HHR).

The regulations are available on the [B.C. Laws](#) website.

This guide is formatted as a set of question and answers, to provide an overview of the new rules for business owners and retailers in the ESR, with some reference to the new regulatory amendments to the TVPCR and HHR. The guide is organized on the following topic areas:

- 1. summary of important dates;**
- 2. prescribed hazards and prohibited and restricted activities;**
- 3. sales;**
- 4. advertising;**
- 5. notice required before sale; and**
- 6. reporting.**

1 | Summary of Important Dates

When must retailers and business owners comply with the new requirements?

EFFECTIVE IMMEDIATELY

- All E-substances that do not contain nicotine, and those that contain both nicotine and cannabis, will be prohibited for sale.
- Cannabis-only vapour products continue to be available for sale through authorized cannabis retailers.
- Retailers cannot sell any E-substances that contain only flavoured chemicals (*i.e. substances that do not contain nicotine, or nicotine salts or cannabis*).
- All advertising of vapour products that can be seen, accessed, or heard by youth is prohibited. This includes places such as store windows and transit hubs.
- New business owners must notify the Ministry of Health of their intention to sell restricted E-substances at least 6 weeks prior to their first sale by using the NOI form.
- New business owners must report the products they wish to sell to the Ministry of Health at least 6 weeks prior to their first sale by submitting a product report, and a manufacturing report, if applicable.

AFTER SEPTEMBER 15, 2020

- All flavoured restricted E-substances – except tobacco flavour - can only be sold at age-restricted sales premises.
- Retailers selling restricted E-substances must ensure that the E-substances they sell meet the requirements with respect to labelling, packaging, volume, concentration and flavour.
- All retailers must comply with the notification and reporting requirements under the ESR.

2 | Prescribed Health Hazards and Prohibited and Restricted Activities

This guide is formatted as a set of question and answers, to provide business owners and retailers with an overview of the new requirements under the ESR. The following sections outline the regulatory amendments that have been approved by Government to help protect people, particularly youth, from the harms of vaping.

What is a health hazard?

Under the *Public Health Act*, a health hazard is a thing, condition, or activity that will or is likely to endanger public health. In addition, the *Public Health Act* enables health hazards to be identified and addressed in a regulation. A health hazard can be a defined condition, thing or activity either associated with injury or illness, or which fails to meet a certain standard relating to health, injury or illness.

Prescribing certain types of vapour products as health hazards allows public health officials to better manage the risk of harm they pose, particularly to youth.

What substances are being prescribed as health hazards for the purpose of the E-Substances Regulation?

Under the ESR, the following will now be health hazards:

1. E-substances that contain non-therapeutic nicotine.
2. E-substances that do not contain nicotine, nicotine salts or cannabis.

Under the ESR, retail sales of what substances are prohibited?

Under the ESR, the sale of the following is prohibited:

1. Flavour only E-substances that do not contain nicotine, nicotine salts or cannabis.
2. E-substances that contain both non-therapeutic nicotine and cannabis.

Under the ESR, sales of what substances are restricted?

Flavoured E-substances containing nicotine or nicotine salts may only be sold in stores that are age-restricted (i.e. people under 19 years of age are not permitted in the store).

What does “non-therapeutic nicotine” mean?

This term refers to nicotine which is not in the form of a drug for which a prescription is required or a product, such as nicotine gum or lozenge, which is intended to be used or consumed for tobacco reduction or cessation purposes.

Vapour products which contain “non-therapeutic nicotine” are health hazards under the HHR.

3 | Sales



TO REDUCE THE APPEAL OF VAPOUR PRODUCTS TO YOUTH, THE MINISTRY HAS PUT RESTRICTIONS ON THE SALE OF E-SUBSTANCES THAT ARE COMMONLY USED BY YOUTH.

What kinds of nicotine-containing E-substances can I sell?

RETAILERS can sell E-substances which contain non-therapeutic nicotine, but with some restrictions, depending upon whether persons under the age of 19 years are permitted on the premises. In the ESR, these products are referred to as “restricted E-substances.”

Please also note that “sell” has a very broad definition and includes offering for sale or providing the product.

What is meant by E-substance?

The term E-substance is defined in the TVPCA as a solid, liquid or gas that, on being heated, produces a vapour for use in an e-cigarette, regardless of whether it contains nicotine, and is not a controlled substance within the meaning of the Controlled Drugs and Substances Act. E-substances are commonly referred to as “e-juice” or “e-liquid.”

What is meant by flavoured restricted E-substances?

The ESR defines “flavoured” as having a taste or smell of anything other than tobacco. This means any restricted E-substance that has a taste or smell of anything other than tobacco will be considered a flavoured restricted E-substance.

What E-substances must I not sell?

RETAILERS cannot sell E-substances that:

- do not contain nicotine, nicotine salts or cannabis or,
- contain both nicotine and cannabis.

The sales of cannabis vapour products are regulated separately under B.C.’s cannabis legislation.

Concentration, volume and flavour restrictions

Retailers cannot sell the following products in B.C.:

- any E-substance that contains a nicotine concentration of more than 20 mg/mL;
- any refillable container for E-substances that can hold more than 30 mLs;
- any tank or cartridge that holds or can hold an E-substance in an amount more than 2 mLs.

RETAILERS will not be permitted to sell flavoured restricted E-substances after **SEPTEMBER 15, 2020** if persons under the age of 19 years are permitted on the sales premises.

The new provincial restrictions on the sale of flavoured E-substances are in addition to federal regulation of flavoured vapour products. Retailers cannot sell the flavoured vapour products that belong to the categories of flavours and substances outlined in Schedule 3 of the federal *Tobacco and Vapour Products Act* (TVPA) <https://laws-lois.justice.gc.ca/eng/acts/t-11.5/FullText.html>.

Are different types of vapour product retailers treated differently by the ESR?

The ESR distinguishes between two types of sales premises in which vapour products may be sold:

- **Age-Restricted Sales Premises** – where minors (those under 19 years of age) are not permitted to enter. Age-restricted stores include specialized vapour product stores.
- **All-ages sales premises** – where minors (those under 19 years of age) are permitted to enter. These sales premises include gas stations, convenience stores, and any other retail establishment, where youth are permitted.

What types of products can the different retailers/types of stores sell?

AGE-RESTRICTED SALES PREMISES

Tobacco flavoured E-substances and other flavoured restricted E-substances may be sold in age-restricted sales premises. However, no retailer may sell the flavours listed in Schedule 3 of the TVPA <https://laws-lois.justice.gc.ca/eng/acts/t-11.5/FullText.html>.

ALL-AGES SALES PREMISES

Only restricted E-substances that taste or smell of tobacco may be sold at all-ages sales premises. No other flavours are allowed. The purpose of this restriction is to limit the range of choice in vapour products in stores where youth have access.

What can businesses do with stock that is no longer compliant?

A retailer who was selling E-substances before the ESR was enacted will have until **SEPTEMBER 15, 2020** to sell their existing stock of E-substances that contain non-therapeutic nicotine but do not comply with the other ESR requirements (i.e. volume and concentration limits, and packaging standards). New retailers must meet ESR requirements immediately.

In addition, retailers that permit persons under the age of 19 years on the sales premises and that have

an existing stock of flavoured E-substances which contain non-therapeutic nicotine will be permitted to sell their existing flavoured stock until **SEPTEMBER 15**. They will not be permitted to sell any flavoured restricted E-substances after **SEPTEMBER 15, 2020**.

However, please note that the transition period with respect to existing stock does not apply to vapour products that are prohibited, even if a retailer has these products in their possession, as no sales of these products are permissible. Prohibited vapour products include flavoured only E-substances and E-substances containing both non-therapeutic nicotine and cannabis.

After **SEPTEMBER 15, 2020**, all retailers will have to comply with all requirements in the ESR.

What is the difference between a business owner and a retailer?

A **BUSINESS OWNER** is the owner of a business that sells E-substances, and a **RETAILER** is a person who sells an E-substance to a purchaser. A **RETAILER** may be a business owner or a retailer may be someone who works for a business owner. The two terms, “business owner” and “retailer,” are used throughout the new regulation and different requirements apply to them. For example, business owners are responsible for submitting a Notice of Intent and product, manufacturing and sales reports. Retailers must not sell restricted E-substances and are responsible for meeting content and volumetric restrictions; flavour restrictions; and packaging and labeling restrictions.

In this guide, when a requirement under the ESR must be met, the responsible party is indicated in bold text (e.g. **RETAILER** or **BUSINESS OWNER**).

What if I sell or deliver E-substances to other provinces?

The ESR does not apply to the online or mail order sale of vapour products to purchasers who are located outside B.C.

4 | Advertising

What are the new restrictions on public advertising?

Although this guide is with respect to the ESR, a related change that retailers (and business owners) should be aware of are the new amendments to the TVPCR. These new amendments are in addition to the existing advertising restrictions that apply to all vapour products.

RETAILERS, manufacturers, distributors, wholesalers or persons acting on behalf of any of these entities, must not advertise vapour products in any place, inside or outside, by any means that permits minors (those under 19 years of age) to see, access or hear the advertisement.

5 | Notices Required Before Sale

Who is required to notify health authorities of their intent to sell e-substances?

Before selling any E-substances from a sales premises, a **BUSINESS OWNER** must notify the Ministry of Health.

What is a notice of intent?

A notice of intent (NOI) is a document that needs to be filled out by a business owner for each sales premises from which restricted E-substances are to be sold. NOI forms are available on-line and, in completing these forms, business owners are asked to provide the following information:

1. Legal name of business
2. Name under which business is conducted
3. Address of sales premises from which restricted e-substances sold
4. Phone Number for sales premises
5. Email address for sales premises
6. Webpage for sales premises (if applicable)
7. If persons under 19 years of age are permitted on the sales premises
8. Health authority in which the sales premises is located

How do I notify the Ministry of Health that I intend to sell restricted E-substances?

In order to notify the Ministry of Health, a **BUSINESS OWNER** must create a business profile in the [BC E-Substances Reporting Application](#) and complete the Notice of Intent.

When should I send in my NOI if I intend to sell restricted E-substances?

A **BUSINESS OWNER** must submit a NOI for their sales premises 6 weeks before the retailer intends to sell restricted E-substances from that premises. After the first NOI has been submitted, notices must be renewed annually. A **BUSINESS OWNER** must submit their NOI before **JANUARY 15** of each year that they intend to continue sales.

6 | Reporting

What am I required to report on?

Product reporting

At least **6 WEEKS BEFORE** they begin selling restricted E-substances, **BUSINESS OWNERS** must report:

- the name and contact information of the manufacturer;
- the brand name and product name;
- the type of product;
- the concentration of nicotine (in mg/mL);
- capacity (in mL) of either the refillable container, or the tank/cartridge to hold the e-substance; and
- the list of all ingredients in an E-substance (both common and scientific names, unless one of these names is not available from the manufacturer).

If any of the above information changes for an E-substance product, a **BUSINESS OWNER** must report this change to the Ministry of Health **WITHIN 7 DAYS** after beginning to sell the changed product.

Manufacturing reporting

If a **RETAILER** formulates, packages, re-packages or prepares restricted E-substances, the **BUSINESS OWNER** must report the name and contact information of the manufacturer for each ingredient they use, along with each ingredient's common and scientific names (if both names are not available from the manufacturer, one will suffice). Manufacturing reports must be submitted **AT LEAST 6 WEEKS** before the retailer first sells that product.

Sales reporting

Every year, **BUSINESS OWNERS** must report their vapour product sales. For each type of vapour product sold, a business owner must report:

- the number of containers and cartridges sold, grouped by brand name and product name;
- the volume (in mLs) of restricted E-substance in the product; and
- the flavour, if the restricted E-substance in the product is flavoured.

The sales information must be collected during the reporting period of **OCTOBER 1** in one year to **SEPTEMBER 30** of the following year. The sales volume data collected during this period must be reported by the **BUSINESS OWNER** before **JANUARY 15**, of every year (i.e. all business owners must report the previous year's sales figures by this date). For example, business owners must submit their first sales report by **JANUARY 15, 2022** for the sales period of **OCTOBER 1, 2020 to SEPTEMBER 30, 2021**.

Where do I have to do to submit my product, manufacturing and sales reports?

Please submit your reports through the BC E-Substances Reporting Application.

