QUESTIONS AND ANSWERS
PROPOSED TOBACCO AND VAPING PRODUCTS ACT

Q. WHAT IS THE GOVERNMENT TRYING TO ACHIEVE WITH ITS NEW APPROACH TO REGULATING VAPING PRODUCTS?

A. The Government’s proposed Tobacco and Vaping Products Act is part of a comprehensive approach to regulating vaping products that is presented in Bill S-5, an Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts, such as the Canada Consumer Product Safety Act and the Food and Drugs Act.

The new approach on vaping products found in Bill S-5 is about balancing four public health goals: protecting youth from nicotine addiction and from inducement to tobacco use and vaping; allowing adults, particularly adult smokers, legal access to vaping products as a less harmful alternative to tobacco; preserving a path to market for vaping products marketed for a therapeutic purpose; and protecting the health and safety of Canadians. The Bill also responds to the 2015 report of the House of Commons’ Standing Committee on Health entitled Vaping: Toward a Regulatory Framework for E-Cigarettes.

Q. WHAT ARE THE KEY MEASURES IN THE PROPOSED VAPING LEGISLATION?

A. Key measures to protect the health of young persons in the proposed Tobacco and Vaping Products Act (TVPA) would include banning the sale of vaping products to Canadians under the age of 18; restricting the promotion of flavours that make vaping products more appealing to young people, like confectionery and dessert flavours; and prohibiting promotional activities that are appealing to youth or that associate vaping products with exciting lifestyles, except where the promotion may only be viewed by adults.

The proposed TVPA also includes measures to protect adult smokers who choose to use vaping products from being deceived with respect to the health effects or health hazards...
of using vaping products and to enhance the public awareness of those hazards. Such measures include a prohibition on false and misleading promotion as well as the power to prescribe (by regulations) information that must appear on vaping product labels and packages, such as nicotine concentration, ingredients and health warnings.

Q. **HOW WILL HEALTH CANADA PREVENT YOUTH FROM ACCESSING VAPING PRODUCTS?**

A. Protecting the health of young persons is the primary objective of the proposed Tobacco and Vaping Products Act.

The Act would include provisions such as restricting sales to youth, prohibiting sales in vending machines and addressing age verification in relation to distance/online sales. It would also include restrictions on vaping product promotion activities that appeal to youth, such as lifestyle advertising, except where the ads may only be viewed by adults, sponsorship promotion and celebrity endorsements.

Q. **WHY CAN’T COMPANIES MAKE HEALTH CLAIMS ABOUT THEIR VAPING PRODUCTS?**

A. The proposed Tobacco and Vaping Products Act (TVPA) would prohibit the promotion of a vaping product in a manner that suggests that it provides health benefits. The purpose of this prohibition is to prevent the public from being deceived or misled with respect to the health hazards of using vaping products. It also seeks to protect young persons and non-users of tobacco products from inducements to use vaping products.

However, the proposed TVPA would authorize the making of regulations respecting exceptions to this prohibition. Regulations made under the proposed TVPA could set out a selection of authorized statements regarding the relative health risks of vaping products, including comparisons with the health effects of using tobacco products, and the conditions for use of these statements in vaping product promotion.

That said, manufacturers or importers of vaping products who would like to market their products as having a therapeutic or health effect may be permitted to do so, but only if they obtain an authorization for sale under the *Food and Drugs Act* (FDA). Such authorization may be granted once Health Canada has reviewed the scientific evidence provided, as required, in support of the claim about the product’s therapeutic or health effect and is satisfied that the claim is substantiated, and that the quality, safety and efficacy requirements of the FDA and its regulations are met.

Q. **WHY IS THE LEGISLATION MUZZLING SCIENTISTS AND PREVENTING COMPANIES FROM RELAYING SCIENTIFIC INFORMATION ABOUT VAPING PRODUCTS?**

A. The proposed Tobacco and Vaping Products Act (TVPA) would not prevent anyone from publishing scientific work in regard to vaping products. The promotion restrictions in the
proposed TVPA would apply to commercial promotion directed at consumers. As expressly stated in the proposed TVPA, promotion restrictions do not apply to scientific works or reports that “use or depict” a vaping product or a vaping product-related brand element, as long as no consideration is given by a manufacturer or retailer for such use or depiction.

This includes legitimate scientific reports that discuss the relative risks of vaping in comparison with the risks posed by the use of tobacco products. This means that vaping product companies, including retailers, may relay legitimate scientific reports about vaping products to their customers, as long as it is not done as a way to circumvent the restrictions on commercial promotion.

Furthermore, given that information advertising about vaping products is permitted under the proposed TVPA (subject to restrictions set out in regulations), vaping product companies could communicate scientific information in their promotions, as long as such promotions comply with other provisions of the Act (e.g. no testimonials, not about health benefits except for authorized statements set out in regulations, not appealing to youth).

Q. DOES THE VAPING LEGISLATION SPECIFICALLY BAN CERTAIN INGREDIENTS IN VAPING PRODUCTS?

A. The proposed Tobacco and Vaping Products Act (TVPA) would ban the manufacture, promotion and sale of vaping products containing ingredients that may give the impression that they have positive health effects or are associated with vitality or energy, thereby making them attractive to youth and adult non-users of tobacco. Such ingredients, listed in Schedule 2 of the proposed TVPA, are prohibited in vaping substances (except prescription vaping substances) and include vitamins, mineral nutrients, amino acids and caffeine. Other ingredients that also contribute to making vaping liquids appealing to youth, like colouring agents, would also be banned.

This list could be amended to add other ingredients, should future evidence indicate that such ingredients act as inducements for young persons or adult non-users of tobacco, to use vaping products.
Q. WHY IS THE GOVERNMENT BANNING FLAVOURS IN VAPING PRODUCTS?

A. The use of flavours in vaping liquids is not restricted under the proposed Tobacco and Vaping Products Act (TVPA). It is the promotion, including by means of the packaging, of certain flavours (dessert, cannabis, confectionary, energy drink and soft drink flavours) that would be banned. Prohibited flavours are listed in Schedule 3 of the proposed TVPA (with exceptions for prescription vaping products for certain flavours).

While flavours help make vaping liquids palatable to adult smokers seeking a less harmful alternative to tobacco, the promotion of certain flavours may appeal to young persons and induce them to use these vaping products. In this way, the proposed TVPA seeks to achieve a balance between these competing public health interests.

Q. WHY DO PROVISIONS OF THE PROPOSED TOBACCO AND VAPING PRODUCTS ACT COME INTO FORCE AT DIFFERENT TIMES?

A. Some provisions of the proposed TVPA would come into force upon Royal Assent of Bill S-5, like the prohibition on sales to youth.

Other provisions would come into force 180 days following Royal Assent to give manufacturers and importers of vaping products a transition period to comply with their new obligations. For example, the provisions that prohibit the manufacture and sale of vaping products containing an ingredient set out in Schedule 2, like colouring agents, would come into force 180 days following Royal Assent. This transition period is to take Canada’s trade obligations into account.

Q. HOW IS VAPING BEING DEALT WITH IN OTHER COUNTRIES? IS OUR APPROACH CONSISTENT WITH THAT OF OTHER DEVELOPED NATIONS?

A. More than 60 countries have regulated vaping products. These countries have taken approaches that range from full bans on their sale to minimal regulation.

Despite these differences, many jurisdictions share Canada’s objectives of protecting youth from the dangers of nicotine addiction and inducements to tobacco use, while allowing adult smokers access to vaping products as a less harmful alternative to tobacco.

Canada's approach is also consistent with a 2014 World Health Organization report that called for countries to restrict the promotion of vaping products directed at non-smokers and young people, to minimize potential health harms, to prohibit unproven health claims, and to restrict flavours.