

## Regulatory update

# Reporting requirements for tobacco and vaping suppliers

March 2021

Several Canadian governments have imposed reporting requirements on manufacturers, wholesalers or retailers of tobacco and vaping products.

### FEDERAL REPORTING REQUIREMENTS

#### Health Canada

The federal *Tobacco and Vaping Products Act* authorizes the government to implement regulatory obligations on manufacturers to submit information on products and emissions, sales data, information on market research, product composition, ingredients, health effects, hazardous properties, research and development, etc.

Reporting regulations under this law were first implemented for tobacco products in 2000,<sup>1</sup> and were revised in 2019.<sup>2</sup> The TVPA also authorizes the department to establish regulations regarding the disclosure of this information to the public.<sup>3</sup> Health Canada has indicated that it intends to develop reporting regulations for vaping products in the fall of 2021, and also regulations regarding public disclosure.<sup>3</sup>

Reporting requirements for tobacco manufacturers include obligations to submit:














- Profiles of the manufacturer, including brands produced and images of packages sold.
- Description of manufacturing practices, including disclosure of additives and ingredients.
- Details on inventory of materials
- The constituents of tobacco products, and the emissions of certain products, using methods established by Health Canada.
- Monthly sales data for each province and brand, including average wholesale price.
- Annual reports on research on tobacco products, including with respect to toxicity, health effects, consumer research and emissions of annual updates. (These requirements were added in 2019).
- Semi-annual reports on certain promotional activities, including retail signage, packaging design and accessories.

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a 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.

7, The Governor in Council may make regulations ... 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).

**FIGURE 1: REPORTING OBLIGATIONS ON TOBACCO MANUFACTURERS AND RETAILERS.**

															
	CA	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NFLD	YK	NWT	NU	
<b>Tobacco products</b>															
Licensing / registration															
Manufacturers	T														
Wholesalers, Importers		T	T	T	T	T	T	T	T	T	T	T	T	T	T
Retailers		T			T	T	T	T	T	T	T	T	T	T	T
Reporting															
Manufacturers	HTS														
Wholesalers, Importers		(Ah)	Ah	T	T	Ah T	Ah T	T	T	T	T	T	T	T	T
Retailers		(Ah)	Ah		At	Ah	Ah	At	T		T				
Reported															
Monthly sales volume by brand/province	HT														
Average wholesale price by brand	H														
Promotional activities/costs	H														
Ingredients and Emissions	H														
Research Reports	H														
Other commercial activities	H														
Manufacturing methods	H														
Production/Import/Export	ST														
Wholesale volume	T														
Retail locations															
Retail volume															
<b>Vaping products</b>															
Licensing or registration															
Manufacturers															
Wholesalers, Importers									T		T				
Retailers		H(N)				(H)			T		T				
Reporting															
Manufacturers															
Wholesalers, Importers							Ah		T		T				
Retailers							Ah								
Reported															
Retail locations															

Key:  
H = Regulations in place administered by Health Ministry  
T = Regulations in place administered by taxation authority (generally the Ministry of Finance)  
S = Statistics Canada  
Ah = Regulatory authority given to Health Minister, but no regulations in place,  
At = Regulatory authority given to taxation authority, but no regulations in place.  
( ) = Partial or proximal regulations or authority

## Canada Revenue Agency

The federal *Excise Act, 2001*, collects taxes on tobacco products at the manufacturer's level. Tobacco manufacturers and tobacco dealers must be licensed by the Canada Revenue Agency.<sup>4</sup> The conditions of license include an obligation to maintain records, and to file regular returns. These returns require manufacturers to report on the number of products they manufactured in each taxable category (Cigarettes, Tobacco Sticks, Other manufactured tobacco, Cigars, Raw Leaf Tobacco). Generally, these reports are required on a monthly basis.

## Statistics Canada

Statistics Canada requires all Canadian tobacco manufacturers (classified to NAICS 312220) to submit monthly information.<sup>5</sup> This information is reported monthly and published by Statistics Canada. Importers are exempt from this requirement, but must report under obligations specific to importers and exporters.

## PROVINCIAL REQUIREMENTS

### Newfoundland and Labrador

Newfoundland and Labrador's *Tobacco and Vapour Products Control Act (s 3)* does not provide explicit regulatory authority to require tobacco suppliers to submit reports. The law does require tobacco retailers to obtain a Tobacco License.<sup>6</sup> They are not required to renew the license, or to provide information on whether or not they are actively selling tobacco products.

Under the Newfoundland and Labrador *Revenue Administration Act*, vapour product retailers and wholesalers are required to be licensed. The license form requires them to provide corporate information, and also to provide estimated monthly sales volumes and the names of their suppliers. Licensed vapour product retailers and wholesalers are obliged to keep business records and to make these records available to government inspectors. Vaping product retailers must submit monthly returns and report aggregate sales value for vapour products and tobacco products (they are not required to report on quantity).<sup>7</sup> Tobacco wholesalers must submit monthly reports which provide information on the taxable categories of tobacco (cigarettes, fine cut tobacco, other tobacco products, cigars, unmarked cigarettes and unmarked fine cut tobacco).<sup>8</sup>

### Prince Edward Island

PEI's *Tobacco and Electronic Smoking Device Sales and Access Act*<sup>9</sup> does not provide explicit regulatory authority to require tobacco suppliers to submit reports.

Tobacco manufacturers and vendors are required to be licensed under the Tobacco Tax Act<sup>10</sup> and its regulations,<sup>11</sup> and the government has the regulatory authority to set reporting requirements. License applications require annual sales information (quantity of cigarettes, cigars and other products) for the previous year and forecast amounts for the coming year,<sup>12</sup> but there are no requirements for renewal or subsequent reports. Wholesale vendors must submit monthly reports on the value of their total sales.<sup>13</sup>

### Nova Scotia

Nova Scotia's *Tobacco Access Act*<sup>14</sup> does not provide explicit regulatory authority to require tobacco suppliers to submit reports.

Under the *Nova Scotia Revenue Act Regulations*,<sup>15</sup> tobacco and vaping wholesalers and retailers must be in receipt of a vendor permit issued by government and must comply with some record-keeping and

reporting obligations. Tobacco wholesalers are required to provide monthly reports to government and to maintain business records. Vaping wholesalers are required to provide monthly information on the quantity of vaping products sold, the retail vendors to whom they were sold. Retail vendors are required to maintain records on purchases and make them available for inspection.

The vendor permit application form requires retailers to identify their business type (i.e. convenience store, smoke shop, etc.), and also their estimated annual quantity of products (vaping or tobacco) that they sell in Nova Scotia each year.<sup>16</sup>

## New Brunswick

New Brunswick's *Tobacco and Electronic Cigarette Sales Act*<sup>17</sup> does not provide explicit regulatory authority to require tobacco suppliers to submit reports.

The province's *Tobacco Tax Act*<sup>18</sup> requires tobacco wholesalers and retailers to be licensed and gives the government regulatory authority to set reporting obligations on wholesale or retail vendors. The retailer license application form<sup>19</sup> requires the applicant to disclose their address and type of store. Retailers are subject to record-keeping requirements, including copies of invoices.<sup>20</sup> Wholesalers are required to submit monthly returns.<sup>21</sup>

## Quebec

Quebec's *Tobacco Control Act*<sup>22</sup> gives the government explicit authority to require manufacturers and distributors to submit, including sales volumes, products sold, expenditures on marketing and other information.<sup>b</sup> No such regulations have yet been developed.<sup>23</sup> In its 2020 report on activities to implement the law, the Quebec Health Ministry identified that requiring additional information from manufacturers would be beneficial.<sup>24</sup>

Quebec's *Tobacco Tax Act*<sup>25</sup> authorizes the government to require reports from tobacco suppliers. All tobacco retailers must be registered with government, but currently have no reporting obligations. Tobacco wholesalers must submit monthly reports.<sup>26</sup>

## Ontario

The *Smoke-Free Ontario Act* provides the government with explicit authority to require wholesalers and distributors of tobacco and vaping products to submit reports.<sup>c</sup><sup>27</sup> To date no such obligations are included in the regulations under this law.<sup>28</sup> Specialty vape shop owners (which benefit from more relaxed regulations) must be registered with their local public health unit.<sup>29</sup>

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- b 30. The Government may make regulations determining standards relating to the reports that the Minister may require tobacco product manufacturers and distributors to file containing the information that the Minister considers necessary to protect public health and ensure compliance with this Act, and in particular
- (1) the volume of sales;
  - (2) the range of tobacco and tobacco products marketed;
  - (3) the sums invested in promotion and advertising;
  - (4) any other information relating to the composition of the tobacco products marketed, in particular the ingredients and properties of such tobacco products.
- The regulations shall prescribe the content, form and frequency of the reports, and the intervals at which and manner in which they must be filed, and may exempt certain categories of tobacco products, or certain persons whose tobacco sales are below the percentage of total tobacco sales determined by the Government, from such obligations.
- c 11 A person who, in Ontario, sells or distributes tobacco products, vapour products or a prescribed product or substance for subsequent sale at retail shall submit reports to the Minister in accordance with the regulations.

The Ontario *Tobacco Tax Act*<sup>30</sup> requires tobacco suppliers (including retailers) to register with the ministry.<sup>31</sup> Wholesalers are required to submit monthly reports.<sup>32 33</sup> The Ontario government makes available the names and addresses of wholesale-level registrants.<sup>34</sup>

## Manitoba

Manitoba's *Smoking and Vapour Products Control Act*<sup>35</sup> does not provide explicit regulatory authority to require tobacco suppliers to submit reports.

Manitoba's *Tobacco Tax Act*<sup>36</sup> provides authority to require reports, and the Tobacco Tax Regulations establish these requirements.<sup>37</sup> Tobacco dealers (including retailers) must be licensed, and the license application requires retailers to provide a profile of their business.<sup>38</sup> Wholesaler tax remittances require information on sales value (not quantity).

## Saskatchewan

Saskatchewan's *Tobacco Control Act* does not provide explicit regulatory authority to require tobacco suppliers to submit reports.<sup>39</sup>

The province's *Tobacco Tax Act*<sup>40</sup> licenses tobacco manufacturers and importers and gives authority to require reports from them. In their monthly tax returns, license holders must report the quantity of each type of tobacco product.<sup>41</sup>

## Alberta

The *Alberta Tobacco and Smoking Reduction Act*<sup>42</sup> authorizes the government to require reporting by retailers.<sup>d</sup> The *Alberta Tobacco and Smoking Reduction Regulation*<sup>43</sup> currently makes no such requirement.

The province's *Tobacco Tax Act*<sup>44</sup> requires wholesalers and importers to be licensed and also requires them to submit monthly tax returns. The form does not require that they provide details on the quantity of products they sell.<sup>45</sup>

## British Columbia

British Columbia's *Tobacco and Vapour Products Control Act*,<sup>46</sup> does not provide explicit regulatory authority to require tobacco suppliers to submit reports to the government, although it does have the authority to compel suppliers to make certain information available to the public.<sup>e</sup> No such regulation is currently in place.<sup>47</sup>

British Columbia's *E-substances Regulation*<sup>48</sup> (under the authority of the B.C. *Public Health Act*) requires retailers who sell vaping products to notify the Health Ministry of their intention to do so. The reporting obligations in this regulation require business owners to provide detailed information on the vaping

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d 9(1) The Lieutenant Governor in Council may make regulations ..... (e.3) respecting the reporting by retailers of their activities that are governed by this Act;

e 11 (2) ... the Lieutenant Governor in Council may make regulations as follows: (h.2) respecting  
(i) the information that must be disclosed to the public or as provided under subparagraph (ii) by a manufacturer, distributor, wholesaler or retailer about  
(A) the ingredients, additives or any other components of tobacco or vapour products,  
(B) the emissions of tobacco or e-substances which arise or may arise from any use of tobacco or vapour products, and  
(C) the health hazards and effects which arise or may arise from exposure by any means, whether voluntary or not, to tobacco or vapour products, or to the emissions of tobacco or e-substances,  
(ii) the persons, entities or class or classes of persons or entities to whom the information must be disclosed, and  
(iii) the content, form, manner and timing of the disclosure;

products sold. Information on the quantity of sales must be provided by January 15 for the first 3 quarters of the preceding year. The information is filed electronically.<sup>49</sup>

The province's *Tobacco Tax Act*<sup>50</sup> requires tobacco retailers, wholesalers and other dealers to be in possession of a permit issued by the Finance Ministry. B.C. imposes a higher rate of PST on vapour products, but there is no license or permit required by tax authorities for these products.

### **Yukon Territory**

The Yukon *Territory's Tobacco and Vaping Products Control and Regulation Act*<sup>51</sup> gives the Minister the right to require business operators to submit reports. No such regulations are currently in place.

Under the Yukon *Tobacco Tax Act*<sup>52</sup>, tobacco wholesale and retailers must be in receipt of a permit issued by the Finance Ministry. Wholesalers and some retailers must submit monthly returns.<sup>53</sup> These returns must include the quantity of cigarettes, loose tobacco and cigars sold.

### **Northwest Territories**

Northwest Territory's *Tobacco and Vapour Products Control Act*<sup>54</sup> provides no authority to government to require tobacco suppliers to report activities to government.

Under the NWT's *Tobacco Tax Act*,<sup>55</sup> tobacco wholesale and retail dealers must be in possession of a permit issued by government. Wholesalers are deemed to be tax collectors and must file monthly returns on their sales and on their purchases.

### **Nunavut**

Nunavut's *Tobacco Control and Smoke-Free Places Act*<sup>56</sup> does not oblige tobacco suppliers to report to government. Legislation introduced in Nunavut in autumn 2020 (Bill 57)<sup>57</sup> would give the government authority to require reports from tobacco and vapour product retailers.

Under the territory's *Tobacco Tax Act*, wholesalers and retailers must be in possession of a permit, and those which are tax collectors must file monthly returns.<sup>58</sup>

## **ENDNOTES -**

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