

Consultation document

Proposed tobacco cost recovery framework



Government
of Canada

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Canada

Health Canada is the federal department responsible for helping the people of Canada maintain and improve their health. Health Canada is committed to improving the lives of all of Canada's people and to making this country's population among the healthiest in the world as measured by longevity, lifestyle and effective use of the public health care system.

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Executive summary

In November 2023, the Minister of Finance introduced [Bill C-59](#), the *Fall Economic Statement Implementation Act, 2023*, which proposed amendments to the [Tobacco and Vaping Products Act](#) (TVPA). The TVPA regulates the manufacture, sale, labelling and promotion of tobacco and vaping products. The new legislative authorities added to the TVPA through Bill C-59 enable the Minister to make regulations relating to fees or charges to be paid by manufacturers to recover costs incurred by the Government of Canada in relation to carrying out the purpose of the TVPA. Bill C-59 also provides new authorities under the TVPA for related compliance measures to administer and enforce the tobacco and vaping cost recovery frameworks.

The proposed cost recovery framework would introduce an annual charge applied to designated tobacco product manufacturers (including importers). This proposed charge would be a variable annual charge based on a manufacturer's tobacco product domestic market share. Fees or charges for vaping product manufacturers would not be included at this time.

The purpose of this consultation is to solicit feedback on the proposed approach to recovering federal government costs for certain tobacco-related activities. Health Canada will consider this feedback when finalizing the tobacco cost recovery framework regulations, and publish a summary.

The proposed cost recovery framework set out in this paper is for consultation purposes only and should not be interpreted as representing the final views of the Minister of Mental Health and Addictions and Associate Minister of Health or the Government of Canada.

Introduction

Context

For decades, the Government of Canada has and continues to undertake activities to address the national public health problem of tobacco use and to protect the health of

Canadians from tobacco-related disease and death. Tobacco use remains the leading preventable cause of premature death in Canada¹, with approximately 46,000 people dying from tobacco-related illnesses every year². While tobacco use has decreased over the years, a significant number of people in Canada are still smoking (11.9% or 3.8M)³. More work needs to be done.

In [Budget 2018](#), the government committed \$331.6 million over five years, starting in 2018-19, and \$66.2 million annually thereafter for [Canada's Tobacco Strategy](#), the current federal strategy to address tobacco use in Canada. The strategy outlines the activities undertaken by Health Canada, the Public Health Agency of Canada, Public Safety Canada, the Royal Canadian Mounted Police, the Canada Border Services Agency, the Canada Revenue Agency, and Indigenous Services Canada in relation to tobacco and vaping.

In 2021, the Minister of Mental Health and Addictions and Associate Minister of Health's [mandate letter](#) committed to requiring tobacco manufacturers to pay for the cost of federal public health investments in tobacco control. [Budget 2023](#), the [2023 Fall Economic Statement](#), and [Budget 2024](#) reiterated the government's commitment to implementing a tobacco cost recovery framework.

The *Fall Economic Statement Implementation Act, 2023* (Bill C-59) received Royal Assent on June 20, 2024. Bill C-59 amended the TVPA to include provisions that enable the Minister to make regulations respecting fees or charges to be paid by tobacco and vaping product manufacturers for the purpose of recovering the costs incurred by the Government of Canada in relation to carrying out the purpose of the TVPA. It also

¹ Statistics Canada. Current Smoking Trends. Health at a Glance. Retrieved from:

<https://www150.statcan.gc.ca/n1/en/pub/82-624-x/2012001/article/11676-eng.pdf?st=wDqqRWTv>

² Canadian Substance Use Costs and Harms. 2023. Can be accessed here:

https://csuch.ca/documents/reports/english/Canadian-Substance-Use-Costs-and-Harms-Report-2023-en.pdf?_cldee=8uPMv0K93rNcHishHRhr7tA7XfJvF_ZHNkCjPFI70b8BPLtPpKaKGXNcadCt2D-p&recipientid=contact-66dfe5925e63e8118145480fcff4b5b1-2b1aa57329714146a59ce192d976ddac&esid=1d1b0e51-8ecd-ed11-a7c6-000d3a09c3d2

³ Canadian Community Health Survey, 2022.

provides new authorities for compliance related measures to administer and enforce the tobacco and vaping cost recovery frameworks.

Additional legislative amendments to the TVPA were included in the *Budget Implementation Act, 2024, No. 1* ([Bill C-69](#)), which received Royal Assent on June 20, 2024. These amendments authorize the provision of customs information collected under the *Customs Act* to Health Canada for the purpose of the administration and enforcement of the TVPA. They also authorize Health Canada to disclose information collected under the TVPA to other federal ministers for certain purposes. Also included in Bill C-69 are provisions to allow certain information collected under the *Excise Act, 2001* to be shared with Health Canada for the purposes of the administration or enforcement of the TVPA. These measures will support the cost recovery framework.

The TVPA and its supporting regulations lay a strong foundation for the Government of Canada's activities to address the health hazards caused by the use of tobacco products. The overall purpose of the TVPA and its regulations, as set out in subsection 4(1) of the 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.

The purpose of the TVPA with respect to tobacco products is to support the overall purpose of the Act. In particular, there are four specific objectives outlined in the TVPA:

- To protect young persons and others from inducements to use tobacco products and the consequent dependence on them
- To protect the health of young persons by restricting access to tobacco products
- To prevent the public from being deceived or misled with respect to the health hazards of using tobacco products
- To enhance public awareness of the health hazards of using tobacco products

Cost recovery within the Government of Canada

Cost recovery is the practice of establishing and collecting fees and charges from fee payers to recover part or all of the costs incurred by the Government of Canada for activities that fee payers benefit from, or, for which they cause the need. This minimizes the cost burden on taxpayers and ensures that businesses pay their fair share.

The Government of Canada has a well-established history of recovering costs from industry. Within the Health Portfolio⁴, fees and charges are collected to offset a portion of the costs of regulating a diverse set of products and activities such as health products, pesticides, and cannabis. The government does not currently invoice fees or charges to tobacco manufacturers in relation to tobacco products.

Health Canada's approach to cost recovery is guided by the following [guiding principles](#):

- Accountability and transparency
- Predictability and sustainability
- Stewardship and fairness

This approach includes elements such as transparent fee or charge setting and costing methodologies, meaningful and inclusive stakeholder engagements, and established processes for regularly reviewing and updating fees and charges.

Purpose and scope of consultation

This consultation paper proposes an annual charge to recover the costs of certain tobacco-related activities undertaken by Health Canada, the Public Health Agency of Canada, and Indigenous Services Canada.

Consultations on the proposed cost recovery framework will be held from **August 1, 2024, to October 10, 2024**.

⁴ Organizations in the Health Portfolio that collect fees include Health Canada, the Canadian Food Inspection Agency, the Patented Medicine Prices Review Board and the Public Health Agency of Canada

The feedback received will be taken into consideration and will help to inform final decisions by the Minister of Mental Health and Addictions and Associate Minister of Health on establishing fees or charges through ministerial regulations.

Proposed cost recovery framework

Tobacco Annual Regulatory Charge

Health Canada is proposing one (1) new charge: an Annual Regulatory Charge that would apply to designated tobacco manufacturers. Designated manufacturer (referred to as “manufacturer”) means an entity in Canada that manufactures or imports tobacco products (products that are made of tobacco) for retail sale in Canada. This would not include entities that only package, label or distribute tobacco products or that do a combination of those activities. As Health Canada does not conduct a pre-market review of tobacco products and does not have a licensing regime in place for these products, the proposed Tobacco Annual Regulatory Charge would recover general tobacco-related program costs. As a general charge, it would not be tied to a specific regulatory process or service and therefore, no performance standard is proposed.

The proposed charge would be a variable annual charge. The charge for each tobacco manufacturer will be proportionate to their domestic market share in the previous fiscal year (April 1 to March 31). Calculating the charge annually would require two steps:

- Calculating the cost base associated with certain tobacco-related activities undertaken by Health Canada, the Public Health Agency of Canada, and Indigenous Services Canada during the previous fiscal year.
- Allocating this cost base by calculating an annual charge for each manufacturer based on their domestic market share of tobacco product net sales revenue (referred herein as sales revenue) from the previous fiscal year (the same fiscal year as the cost base) (see section on [allocating the cost base to manufacturers](#) for the allocation methodology)

An invoice for the annual charge would be sent to manufacturers whose domestic tobacco product sales revenue is equal to at least 0.001% of the total domestic sales revenue of all manufacturers for the previous fiscal year. This threshold aligns with the [United States User Fees](#) for domestic manufacturers and importers of tobacco products, where a manufacturer or importer does not have to pay an assessment if their percentage share calculated is less than 0.0001%, accounting for the larger size of the US market.

Tobacco manufacturers would be required to submit an annual statement on or before April 30 of each year that accounts for their domestic tobacco product sales revenue in the preceding fiscal year. This information would be used to calculate each manufacturer's annual charge and to determine if a manufacturer would be invoiced, based on the proposed 0.001% domestic market share threshold.

Invoices for the annual charge would then be sent to manufacturers on an annual basis before or by October 1. Manufacturers would have until October 31 of each year to pay in full.

[Annex 1](#) provides a sample scenario of an annual charge for a manufacturer.

Cost base

Health Canada is proposing to recover the costs of certain tobacco-related activities undertaken by Health Canada, the Public Health Agency of Canada, and Indigenous Services Canada related to carrying out the purpose of the TVPA, such as compliance and enforcement activities related to tobacco products and putting increased rules and guidelines in place, including the development and implementation of regulations. The costs to administer the proposed tobacco cost recovery framework would also be included.

Certain program costs are excluded from the cost base of the Tobacco Annual Regulatory Charge, such as the costs associated with activities that are not closely related to tobacco products or to carrying out the purpose of the TVPA. Activities that would not be targeted for recovery would include, among others, activities conducted by the Canada Revenue Agency, Public Safety Canada, the Royal Canadian Mounted Police, and the Canada

Border Services Agency. These activities would not be targeted for recovery as they relate to law enforcement activities to address the illegal market and taxation. They are not closely related to the TVPA and its regulations. More details on included and excluded activities can be found in [Annex 2](#).

The cost base to be recovered each year would vary to reflect the costs of undertaking the included activities from the previous fiscal year. Budget 2018 allocated \$331.6 million over five years, starting in 2018-19, and \$66.2 million annually thereafter for Canada's Tobacco Strategy. This \$66.2 million annual amount encompasses the costs associated with all tobacco and vaping-related activities undertaken across the federal government. The cost base, therefore, would be comprised of a portion of this \$66.2 million, as the cost base would exclude the costs of certain activities, such as those not closely related to the TVPA and its regulations.

Allocating the cost base to manufacturers

Determining the charge to each tobacco manufacturer requires the collection of data on the tobacco market. All tobacco manufacturers would be required to submit a statement each year, by no later than April 30, to provide data on the previous fiscal year's domestic tobacco product sales revenue.

The information that manufacturers would be required to submit in the statement would include the manufacturer's domestic sales revenue for all tobacco products that are made of tobacco, including:

- Cigarettes
- Cigars
- Little cigars
- Cigarette tobacco
- Pipe tobacco
- Water pipe tobacco

- Leaf tobacco
- Smokeless tobacco
- Heated tobacco products
- All other tobacco products that are made in whole or in part of tobacco

Sales revenue would not be required to be submitted in this statement for papers, tubes, and filters intended for use with tobacco products, or for any device that is necessary for the use of a tobacco product and the parts that may be used with the device.

Health Canada is proposing that each manufacturer's domestic tobacco product market share would be determined according to the past fiscal year's domestic sales revenue (in Canadian dollars) from the period of April 1 to March 31. Domestic tobacco product sales revenue would exclude any taxes and duties paid in a fiscal year period as well as the value of any returns of tobacco products to the manufacturer during the same period.

The domestic sales revenue reported by a manufacturer would be portrayed as a percentage of the total domestic tobacco product sales revenue reported by all manufacturers. The charge that would be invoiced to each manufacturer would be based on the formula:

$$A/B \times C$$

Where:

- *A* is a manufacturer's domestic tobacco product net sales revenue for the fiscal year (April 1 to March 31)
- *B* is the aggregate domestic tobacco product net sales revenue of all manufacturers for the fiscal year
- *C* is the annual cost base for the fiscal year

This method of calculation is proposed as each tobacco manufacturer would pay the same percentage share of sales revenue from their applicable domestic market share.

Compliance and enforcement

As per the [Compliance and Enforcement Policy for the Tobacco and Vaping Products Act](#), Health Canada enforces the TVPA through a variety of compliance and enforcement activities. Health Canada may take a number of enforcement actions to address non-compliance with the TVPA and its regulations, depending on the circumstances. These may include but are not limited to issuing warning letters to non-compliant regulated parties, seizing products, and making recommendations for prosecution.

Once in force, the cost recovery regulations would oblige all tobacco manufacturers to pay an annual charge, except for those whose domestic sales revenue would be less than 0.001% of the total domestic sales revenue of all manufacturers. Failure by a manufacturer to submit the information required for calculating the annual charge or to pay the charge would amount to a contravention of the proposed regulations and might result in any number of enforcement actions, including an order by the Minister that would prohibit the sale of one or more tobacco products by a manufacturer. Additionally, interest charges would begin to accrue if payment is not received by October 31, as per the [Interest and Administrative Charges Regulations](#).

The annual charge for each manufacturer would be based on the statements submitted by all manufacturers for this purpose. The dependence on market share to calculate the charge to each manufacturer underlines the need to monitor compliance with the submitted statements. It is proposed that manufacturers must keep the documents used to prepare the statement and respond to any requests for clarifying information in the statement for at least seven years. Documents would need to be kept by the manufacturers in paper or electronic form and would need to be readily accessible for review on request by the Minister.

If an error is discovered in a statement submitted by a manufacturer after a charge has been invoiced, a correction (i.e., charge adjustment) may be required.

Accountability and transparency

Under subsection 42.1(2) of the TVPA, before making regulations, the Minister must consult with any persons or entities that the Minister considers to be interested in the matter. Such consultation is subject to Article 5.3 of the [World Health Organization Framework Convention on Tobacco Control](#), which sets out an obligation for Parties, in setting and implementing their public health policies with respect to tobacco control, to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

It is proposed that the ministerial regulations would require the Minister to make certain information available to the public for accountability and transparency purposes. The disclosure could include the names of manufacturers that did not submit statements, the names of manufacturers that were invoiced a charge and did not pay in full by October 31, as well as any information relating to the compliance measures taken in respect of each manufacturer that has failed to pay their annual charge or submit the required information.

The ministerial regulations would be subject to the [Statutory Instruments Act](#) and review by the Standing Joint Committee for the Scrutiny of Regulations, which has the power to recommend to Parliament that all or any portion of the ministerial regulations be revoked.

There are also a number of legislative and government policy requirements to ensure proper accountability and transparency when fees and charges are introduced through ministerial regulations.

The Deputy Minister of Health Canada, as the Accounting Officer under the [Financial Administration Act](#), is accountable before the appropriate Parliamentary committees for duties assigned to them by the Minister, including those under regulations related to fees or charges.

The Treasury Board [Directive on Charging and Special Financial Authorities](#) details the responsibilities of the Chief Financial Officer and senior departmental managers. The tobacco cost recovery framework would be administered and reported on in accordance

with the Directive. For example, Health Canada would be responsible for reporting via the [Departmental fees report](#).

All cost-recovered programs are subject to departmental evaluation as well as internal and external audits to ensure fees are consistent with Government of Canada legal obligations and policies.

The proposed Tobacco Annual Regulatory Charge would be monitored on an ongoing basis. Should there be changes in the future (e.g., to the charge calculation formula), the department is committed to re-engaging on a revised proposal.

Finally, consistent with Government of Canada practices, Health Canada would establish a dispute resolution mechanism under the proposed framework to provide manufacturers with a mechanism to address disputed charges.

Contact us

The consultation period will be between **August 1, 2024**, and **October 10, 2024**.

Stakeholders, partners, and other interested parties are encouraged to provide written comments and responses to Health Canada by no later than **October 10, 2024**. Written submissions can be sent to: tcr-rct@hc-sc.gc.ca

You must declare any perceived or actual conflicts of interest with the tobacco industry when providing input to this consultation. If you are part of the tobacco industry, an affiliated organization or an individual acting on its behalf, you must clearly state so in your submission.

Health Canada is also interested in being made aware of perceived or actual conflicts of interest with the vaping and/or pharmaceutical industry. Therefore, please declare any perceived or actual conflicts of interest, if applicable, when providing input. If you are a member of the vaping and/or pharmaceutical industry, an affiliated organization or an individual acting on their behalf, you are asked to clearly state so in your submission.

Next steps

Once the consultation period ends, Health Canada will consider all comments received while finalizing the ministerial regulations that will implement the tobacco cost recovery framework.

Annex 1: Charge calculation sample scenario

The annual charge invoiced each year to each manufacturer would be the amount calculated by the following formula:

$$A/B \times C$$

Where:

- *A* is a manufacturer's domestic tobacco net product sales revenue* for the fiscal year (April 1 to March 31)
- *B* is the aggregate domestic tobacco product net sales revenue* of all manufacturers for the fiscal year
- *C* is the annual cost base for the fiscal year

Example:

Cost base (Program and corporate costs) = \$50 million

Manufacturer A reported domestic tobacco product net sales revenue data as follows:

- Manufacturer A domestic net sales revenue* = \$1 million

Domestic market-wide tobacco product net sales revenue data for all manufacturers:

- Total industry domestic net sales revenue* = \$5 billion

*Sales revenue = Manufacturer's sales of domestic tobacco products in Canadian dollar value excluding duties and other taxes, as well as the value of any returns of tobacco products to the manufacturer during the same period.

Charge calculation for manufacturer A:

Charge

= Manufacturer A domestic sales revenue / Total industry domestic sales revenues
× Cost base

= \$1 million / \$5 billion × \$50 million

= \$10,000

Annex 2: Additional cost information

Methodology

The proposed Tobacco Annual Regulatory Charge was developed in accordance with the Treasury Board Secretariat's [Guide to Costing](#).

Corporate support costs

Corporate support costs are calculated at 22% of total program costs and include those services provided by corporate branches, including:

- Management and oversight for Access to Information requests
- Audits and evaluations
- Communications
- Human resources
- Financial management
- Information management and technology
- Real property and security
- Legal services

Program costs

Program costs include both direct and indirect costs. Direct costs are those costs incurred as a direct cost of the provision of an activity. These include the salaries of the employees who deliver the program and relevant operating costs that directly contribute to the provision of the activity.

Indirect costs are those costs that are incurred in connection with providing a number of activities, such as supervisory costs.

Both direct and indirect program costs include Employee Benefit Plan (EBP) and accommodation costs calculated as 27% and 13% of program salary costs, respectively.

The activities that are being proposed for tobacco cost recovery include:

- Supporting improved services and resources to help people quit smoking
- Funding programs to explore the most effective ways to help Canadians quit smoking by working with researchers, communities, and public health groups
- Giving information on and access to less harmful sources of nicotine
- Informing youth and young adults about the health risks of using tobacco products
- Compliance and enforcement activities related to tobacco products
- Putting increased rules and guidelines in place, including the development and implementation of regulations
- Studying new and unique ways to address tobacco use in Canada
- Publicly releasing industry reports and research and surveillance findings to aid health stakeholder research
- Maintaining and supporting work done as a part of the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC)
- Providing funding to First Nations, Inuit and the Métis Nation to develop and implement their own self-determined, culturally appropriate and distinct approaches to reducing commercial tobacco use based on their own needs and priorities
- Supporting an Indigenous-led Community of Practice related to the development and delivery of strategies, initiatives, programming, and services towards the reduction of commercial tobacco use.

The activities that are not being proposed for tobacco cost recovery include:

- Activities undertaken in relation to vaping, except if they are for the purpose of helping Canadians quit tobacco
- Activities undertaken by Health Canada in relation to the [Food and Drugs Act](#) and the [Canada Consumer Product Safety Act](#)
- Activities undertaken by the Canada Border Services Agency, Public Safety Canada, and the Royal Canadian Mounted Police in relation to their law enforcement activities
- Activities undertaken by the Canada Revenue Agency in relation to tax laws such as the [Excise Act, 2001](#)
- Activities for which costs would be recovered under another cost recovery provision or framework, such as costs incurred in relation to anything required or authorized under section 39 or subsection 41(4) of the TVPA, including the storage, movement or disposal of a thing or conveyance.