

Proposals to Amend the Tobacco Reporting Regulations

A Submission by the Non-Smokers' Rights Association

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The Non-Smokers' Rights Association (NSRA) is Canada's oldest national tobacco control non-governmental organization. Through advocacy, public policy, research and education, the NSRA has worked for over 40 years to protect the public health of Canadians by seeking to eliminate the illness and death caused by tobacco industry practices and products. We are pleased to provide the Government of Canada with our comments on the proposals to amend the *Tobacco Reporting Regulations*. We have no perceived or actual conflicts of interest to declare.

Proposal No. 1: Health Canada proposes that manufacturers be required to report:

- Their total sales, as well as sales by brand and by package type, monthly for cigarettes and cigarette tobacco, and quarterly for all other tobacco products; and
- Their records on research and development activities for all tobacco products every six months (any documentary material, regardless of medium or form, would constitute a record).

The NSRA does not believe that Proposal 1 is adequate to capture the information needed to understand developments in the tobacco market and upon which to base sound tobacco control policy decisions. The NSRA urges Health Canada to expand the reporting requirements to include *all* tobacco products and to include information beyond sales and R&D activities.

Currently, the definition of a "consumer tobacco product" does not capture, among other things, waterpipe tobacco, heated tobacco products and some smokeless tobacco products. This definition needs to be expanded such that it applies to all current and any future tobacco products not yet on the Canadian market. Reporting requirements for all tobacco products should be expanded to include manufacturing procedures (section 10), ingredients (section 11), constituents (section 12), emissions (where applicable) (section 14) and promotional activities (including direct and indirect expenditures) (sections 16 – 24).

Proposal No. 2: Health Canada proposes that manufacturers be required to provide supplementary information once notified by the Minister. The form, manner and time frame allowed for manufacturers to provide the supplementary information would be specified in the request and could vary according to the nature of the information requested.

The NSRA supports this proposal.

Proposal No. 3: Health Canada proposes that manufacturers be given a period of no more than 30 calendar days to address any deficiency in the information that is submitted pursuant to the Regulations, once they are notified of the deficiency by Health Canada. Should the manufacturer fail to address the deficiency or should the information provided continue to be deficient, the sale of the tobacco product in question would be suspended until the missing information is submitted to Health Canada, and the manufacturer would be informed accordingly.

The NSRA supports this proposal.

Proposal No. 4: Health Canada proposes that manufacturers be required to maintain all documents used to prepare their reports for a period of six years after the end of the year to which the document relates. The proposed period is similar to the retention period set out in other legislation (e.g. *Canada Consumer Product Safety Act* and *Income Tax Act*). This documentation would have to be kept in a form and manner prescribed by the regulations, so that it could be readily accessed and viewed in Canada during on-site audits.

The NSRA supports the proposal to require manufacturers to maintain all records and documents but recommends that the length of time that documents must be retained be increased significantly to 25 or 30 years, and for certain categories, indefinitely.

Experience indicates that the latency period for the development of a tobacco-related disease is usually decades. Given that the long-term health effects of new heated tobacco products, both for users and bystanders, remain unknown, it is prudent for the government to require manufacturers to maintain all records and documents for decades, and perhaps even indefinitely. This information can be used for audits, but it could also prove to be invaluable to health-related research and litigation. Moreover, to help preserve historical information, the government should require that all records and documents be transferred to the new owner in the case of a manufacturer being purchased, taken over or merged with another company.

Proposal No. 5: Health Canada proposes that manufacturers be required to report any information on tobacco promotions referred to in paragraph 18(2)(c) of the proposed *TVPA*, such as promotions directed at tobacco growers, distributors and retailers, in a form and manner to be prescribed by the regulations, on an annual basis.

The NSRA supports this proposal and recommends that the required reporting be at least semi-annual and include all direct and indirect promotional expenditures. This information should be reported per province, as well as aggregated nationally.

The regulations should also include an “other types of promotion” category to ensure that all tobacco product promotional activities subject to the Act but not covered by sections 16 to 24 of the *TRR* are reported. As per Proposal #2, the NSRA also urges Health Canada to prioritize the creation of measures to ensure that manufacturers and retailers submit supplementary information pertaining to promotional activities in a timely fashion, and prioritize the development of enforcement measures.

Proposal No. 6: Health Canada proposes to require the release of the following tobacco product information by the Minister, on an annual basis:

- Constituents and emissions, by product type and brand; and
- Sales, by product type and brand, in Canada and in each province.

The NSRA supports the proposal to require the public release of information reported by tobacco manufacturers and recommends that the scope be expanded and the schedule be more frequent.

Publicly sharing information on constituents, emissions and sales is a start; however, this requirement should be extended to also include ingredients, promotional expenditures and activities, and price information. Indeed, on the issue of price, the regulations should be amended to require tobacco manufacturers to report the date of any price changes, as well as the price before and after the change. This information needs to be reported as it occurs, and publicly reported by the Minister at least semi-annually.

In keeping with Article 5.3 of the *Framework Convention on Tobacco Control*, the NSRA urges Health Canada to increase industry accountability by putting measures in place to improve the transparency of industry activities, including by providing information on promotional activities and expenses that are aimed at influencing public policy. The disclosure of information collected under the *TRR* to the public, researchers and the public health community would contribute significantly to the advancement of tobacco control policies in Canada as well as globally, given the multinational nature of tobacco firms.

Proposal No. 7: Health Canada proposes that references in the *TRR* to the Health Canada official methods be made ambulatory, allowing for these to be more readily updated in response to technological advances. Health Canada intends to consult interested parties before changes to these methods are made.

The NSRA supports this proposal.

Proposal No. 8: Health Canada proposes the following amendments in order to further update and clarify reporting requirements:

- To require digital images of the filters (in cigarettes, and other products that come with a filter);
- To require the weight of one unit of product to be determined using a sample consisting of at least 30 units;
- To specify that the reports on sales for the “in each province” category, in section 13 of the *TRR*, are for products destined to be sold in a province or in a territory;
- To clarify the requirements for research and development activities, in section 15 of the *TRR*, by adding examples (e.g., modifications to existing products; consumer market research; and consumer preferences, attitudes and beliefs) and by specifying the scope of products (e.g., products manufactured by the manufacturer and by a third party); and
- To clarify the requirements for the reports on promotional activities, in sections 16 to 24 of the *TRR*, with respect to promotions made virtually.

The NSRA supports the amendments proposed.