

Chapter 20

Health—Monitoring Enforcement of Tobacco and Vapour Products' Legislative Requirements

1.0 MAIN POINTS

It is illegal for retailers to sell tobacco or vapour products to minors under 18 years of age. There are also restrictions around the display and promotion of these products at retail locations. The Ministry of Health uses the Saskatchewan Health Authority's tobacco enforcement officers to enforce these legislative restrictions. Officers conduct inspections to assess the more than 1,200 retailers in Saskatchewan who sell tobacco and vapour products.

Since our June 2021 audit, the Ministry made some improvements to its monitoring of the enforcement of tobacco and vapour products' legislation, but further work remains.

By June 2023, the Ministry updated its *Tobacco and Vapour Products Compliance and Enforcement Program Manual* to include better guidance on key roles and responsibilities, inspection practices (types and frequency expected), handling of complaints, and timeframes for communication of inspection results. We found tobacco enforcement officers sent inspection results to non-compliant retailers within expected timeframes.

The Ministry still needs to ensure the Saskatchewan Health Authority's tobacco enforcement officers:

- Maintain a complete list of retail locations that sell tobacco and vapour products. While the Ministry obtained information from the Ministry of Finance during 2022–23 to help maintain its listing of retail locations, we found the Ministry's listing did not include 19% of the retailers we tested. Incomplete information about retail locations may result in locations going uninspected, increasing the risk of those locations selling tobacco and vapour products to youth.
- Complete youth test shopper inspections and reinspections within expected timeframes. Between April 2021 and June 2023, we found tobacco enforcement officers did not conduct youth test shopper inspections at 309 retailers. In addition, tobacco enforcement officers did not complete reinspections within six months for 187 retailers with previous infractions. Timely youth test shopper inspections are a key tool to determine whether retailers are selling tobacco and vapour products to youth.
- Complete routine retail inspections within expected timeframes. We identified 362 retailers with missed routine inspections between April 2021 and June 2023. Untimely inspections increase risks of retailers inappropriately displaying and selling tobacco and vapour products.
- Resolve complaints about retailers timely. We found 15 out of 57 complaints received during our audit period were not resolved timely (i.e., within one month). Not investigating complaints timely increases the risk retailers continue to not comply with requirements and sell products illegally.



Finally, the Ministry needs to continue enhancing its reporting to senior management at the Ministry and the Authority. For example, its current quarterly reports do not include non-compliance rates and year-over-year trends for routine retail inspections, analysis of trends for youth test shopper inspections, and strategies undertaken to improve compliance rates. Without sufficient reporting, decision makers may not have information necessary to evaluate the effectiveness of the current enforcement approach and make adjustments as needed.

Effective and active enforcement restricts access to tobacco and vapour products by youth, which protects them from the harms associated with the use of such products.

2.0 INTRODUCTION

Federal, provincial, and territorial governments share responsibility for regulating tobacco and vapour products in Canada.

Tobacco means tobacco in any form in which it is used or consumed, and includes snuff and raw leaf tobacco.¹ Vapour product means any or all of the following: an e-cigarette, an e-substance, a cartridge from, or component of, an e-cigarette.^{2,3}

In general, the Federal Government is responsible for regulating the manufacture, sale (e.g., online sales), labelling, and promotion (e.g., advertising) of tobacco and vapour products sold in Canada, including restrictions around product flavours. Provincial legislation is designed to reduce youth access to tobacco and vapour products, and to protect all Saskatchewan residents from the harms associated with environmental tobacco smoke and vapour.⁴

The Tobacco and Vapour Products Control Act and *The Tobacco and Vapour Products Control Regulations* regulate tobacco and vapour product use, sale, display, and advertisement in Saskatchewan. The Ministry of Health uses the Saskatchewan Health Authority to conduct tobacco and vapour enforcement activities (e.g., inspections of retail locations).

2.1 Focus of Follow-Up Audit

In 2021, we assessed the Ministry of Health's processes to monitor the enforcement of tobacco and vapour products' legislative requirements. Our *2021 Report – Volume 2*, Chapter 15, concluded the Ministry had, other than in the areas of our eight recommendations, effective processes to monitor the Saskatchewan Health Authority's enforcement of provincial legislative requirements over the sale, promotion, and use of tobacco and vapour products.⁵

¹ For the purposes of this audit, tobacco products include tobacco-related products. Under *The Tobacco and Vapour Products Control Act*, s. 2(k) "tobacco-related product" means a cigarette paper, a cigarette tube, a cigarette filter, a cigarette maker, a pipe or any other product used in association with tobacco that is prescribed.

² *The Tobacco and Vapour Products Control Act*, ss. 2(i), (k.1).

³ Vaping is the act of inhaling an aerosol, known as vapour, produced by a vaping (vape) device. This vapour is inhaled into the lungs. When vape devices are turned on, the battery warms the heating component that converts the e-liquid into an aerosol form to allow for vaporization. Vapour products do not contain tobacco, but can deliver nicotine.

⁴ www.saskatchewan.ca/residents/health/wellness-and-prevention/tobacco-and-vapour-products/tobacco-and-vapour-products-legislation (26 September 2023).

⁵ *2021 Report – Volume 2, Chapter 15*, pp. 85–106.

To conduct this audit engagement, we followed the standards for assurance engagements published in the *CPA Canada Handbook—Assurance* (CSAE 3001). To evaluate the Ministry's progress toward meeting our recommendations, we used the relevant criteria from the original audit. Ministry management agreed with the criteria in the original audit.

To carry out our first follow-up audit, we discussed progress made by Ministry management, reviewed the Ministry's updated guidance, analyzed data on inspections, and evaluated key reports provided to senior management.

3.0 STATUS OF RECOMMENDATIONS

This section sets out each recommendation including the date on which the Standing Committee on Public Accounts agreed to the recommendation, the status of the recommendation at June 30, 2023, and the Ministry of Health's actions up to that date.

3.1 Enforcement Manual Updated

We recommended the Ministry of Health update its Enforcement Manual to reflect the structure, accountability, and inspection practices for the tobacco and vapour control program. (2021 Report – Volume 2, p. 93, Recommendation 1; Public Accounts Committee has not yet considered this recommendation as of November 3, 2023)

Status—Implemented

The Ministry of Health sufficiently updated its *Tobacco and Vapour Products Compliance and Enforcement Program Manual* (enforcement manual) to better reflect the current responsibilities for, and expected practices of, the tobacco and vapour control program.

In December 2022, the Ministry updated its enforcement manual to:

- Reference current legislation (i.e., *The Tobacco and Vapour Products Control Act* and *The Tobacco and Vapour Products Control Regulations*).
- Clarify the roles and responsibilities for the Ministry and the Saskatchewan Health Authority. For example, it outlines the Ministry's responsibility to appoint tobacco enforcement officers and that the Minister of Health directly delegates enforcement of the Act and related regulations to tobacco enforcement officers. The Authority, as employers of the tobacco enforcement officers, is accountable to the Minister of Health.
- Require tobacco enforcement officers to track activities and provide information required by the Ministry.
- Include the types and frequency of inspections the Ministry expects tobacco enforcement officers to perform. For example:
 - **Youth test shopper program:** inspections done at tobacco and vapour product retail locations once per fiscal year by Authority tobacco enforcement officers and



contracted youth to assess whether a retailer will sell or refuse to sell tobacco or vapour products to minors.

- **Routine retail inspections:** inspections done at tobacco and vapour product retail locations once per fiscal year by Authority tobacco enforcement officers to assess retailers' compliance with legislative requirements (e.g., no public displays of cigarettes or vape products, appropriate signage).

When tobacco enforcement officers find non-compliance during these inspections, the Ministry expects them to perform a follow-up inspection within six months.

- Require investigation (e.g., initiate investigation within two days of receipt of complaints) and documentation of complaints. The Ministry and the Authority use an IT system to track enforcement activities and to document complaints under the tobacco and vapour control program.

Having a well-documented and updated enforcement manual helps tobacco enforcement officers and the Authority to know the Ministry's expectations for the tobacco and vapour control program.

3.2 List of Retail Locations Incomplete

We recommended the Ministry of Health establish a formalized process to maintain a complete list of retail locations that sell tobacco and vapour products. (2021 Report – Volume 2, p. 94, Recommendation 2; Public Accounts Committee has not yet considered this recommendation as of November 3, 2023)

Status—Partially Implemented

The Ministry of Health obtained quarterly information from the Ministry of Finance to help maintain a complete list of tobacco and vapour product retailers and retail locations in Saskatchewan. However, we found the list incomplete and that tobacco enforcement officers did not update this list to include all retailers.

At June 30, 2023, over 1,200 retailers sell tobacco and vapour products in Saskatchewan.

Starting in 2022–23, the Ministry began receiving quarterly listings of retailers registered to collect taxes from the sale of tobacco and vapour products. The Ministry of Finance provided these listings to the Ministry about retailers licensed under *The Vapour Products Tax Act*, and tobacco retailers registered to collect PST.^{6,7} The Ministry then sent these listings to the Authority's tobacco enforcement officers to update the IT system used to track enforcement activities.

⁶ Retailers in Saskatchewan, including tobacco retailers, are responsible to collect and remit provincial sales tax for non-exempt goods and services, and must register with the Saskatchewan Ministry of Finance. When registering, retailers must identify whether they sell tobacco and/or vapour products.

⁷ Effective September 1, 2021, the Ministry of Finance collects a 20% vapour products tax (VPT) on vapour product sales and those sales are no longer subject to PST. The Ministry of Finance required all vapour product vendors to obtain a VPT vendor licence by August 31, 2021, in order to report and remit the VPT collected. www.saskatchewan.ca/business/taxes/licensing-and-reporting/provincial-taxes-policies-and-bulletins/vapour-products-tax/vapour-products-tax-licence (14 September 2023).

To assess the completeness of the Ministry's list of retail locations at June 2023, we performed the following:

- Determined whether the list contained all 12 retailers included in Health Canada's latest Vaping Compliance and Enforcement Reports (these reports covered the period from July 2020 to March 2022). We found the Ministry's listing appropriately reflected these retailers still operating at June 2023.
- Determined whether the list contained all 44 retailers included in the Ministry's listing of complaints. We found the Ministry's list appropriately reflected these retailers still operating at June 2023.
- Selected a sample of 32 retailers from the Ministry of Finance's quarterly listings of licensed retailers to determine whether the Ministry of Health's list included those retailers. We found the Ministry did not update its listing for six of 32 retailers (19%).

By not having a complete list of all retailers, the Ministry does not know how many retail locations selling tobacco and vapour products remain uninspected and how many are non-compliant (e.g., selling tobacco and vapour products to minors).

3.3 Youth Test Shopper Inspections and Reinspections Not Done as Expected

We recommended the Ministry of Health work with the Saskatchewan Health Authority to conduct required youth test shopper inspections of retail locations that sell tobacco and vapour products. (2021 Report – Volume 2, p. 95, Recommendation 3; Public Accounts Committee has not yet considered this recommendation as of November 3, 2023)

Status—Partially Implemented

We recommended the Ministry of Health work with the Saskatchewan Health Authority to reinspect retail locations that sell tobacco and vapour products to youth in a timely manner. (2021 Report – Volume 2, p. 96, Recommendation 4; Public Accounts Committee has not yet considered this recommendation as of November 3, 2023)

Status—Partially Implemented

Tobacco enforcement officers do not consistently conduct youth test shopper inspections, or reinspections, within timeframes set by the Ministry of Health for retail locations that sold tobacco or vapour products to youth.⁸

The Ministry requires tobacco enforcement officers to perform youth test shopper inspections at most retail locations once per fiscal year. When officers identify infractions, the Ministry requires them to complete reinspections within six months. We found the established timeframes reasonable and consistent with good practice. The Ministry updated its enforcement manual to reflect these timeframes.

⁸ Youth test shopper inspections exclude retailers in the northern region, at age-restricted locations and on First Nations' reserves.



The Ministry monitors the number of locations that had at least one inspection per fiscal year. As noted in **Figure 1**, the percentage of retailers not inspected in each fiscal year over the last five years ranged from about 5%–21%. In addition, the percentage of non-compliant retailers increased over the last four years.

Figure 1—Tobacco and Vapour Product Test Shopper Program Statistics by Fiscal Year

| Fiscal Year | Retailers ^A | Retailers Inspected at Least Once | Retailers Not Inspected | Percentage of Retailers Not Inspected | Total Number of Test Shopper Visits | Number of Non-Compliant Retailers | Non-Compliance Rate ^B |
|-------------|------------------------|-----------------------------------|-------------------------|---------------------------------------|-------------------------------------|-----------------------------------|----------------------------------|
| 2018–19 | 1,082 | 935 | 147 | 13.6% | 951 | 118 | 12.4% |
| 2019–20 | 1,037 | 985 | 52 | 5.0% | 1,029 | 104 | 10.1% |
| 2020–21 | 1,041 | 915 | 126 | 12.1% | 991 | 108 | 10.9% |
| 2021–22 | 1,092 | 858 | 234 | 21.4% | 913 | 119 | 13.0% |
| 2022–23 | 1,093 | 1,015 | 78 | 7.1% | 1,065 | 155 | 14.6% |

Source: Adapted from information provided by the Ministry of Health.

^A Excludes northern region, age-restricted locations, and First Nations' reserves.

^B Number of non-compliant retailers divided by total number of test shopper visits.

We analyzed data on youth test shopper inspections conducted between April 2021 and June 2023 and found:

- Tobacco enforcement officers missed inspecting 117 retailers in 2022–23 and 192 retailers in 2021–22 as expected (i.e., at least once each fiscal year).
- The results of the inspections showed 309 inspections with infractions requiring a reinspection within the required six months. Tobacco enforcement officers did not complete reinspections within six months for 187 retailers—officers completed reinspections between 7–23 months after the initial infraction.

In August 2022, the Ministry provided new reports to the Saskatchewan Health Authority showing both overdue youth test shopper inspections and reinspections. However, it did not require the Authority to explain reasons for the overdue inspections and reinspections or document such in its IT system. In addition, the Ministry has not provided the Authority with these reports since August 2022.

By not inspecting retail locations within the expected timeframes, there is a heightened risk that retailers will continue to illegally sell tobacco and vapour products to youth.

3.4 Routine Retail Location Inspections Not Completed as Expected—Frequency Not Risk-Based

We recommended the Ministry of Health set a reasonable frequency for conducting periodic routine inspections at retail locations that sell tobacco and vapour products. (2021 Report – Volume 2, p. 100, Recommendation 6; Public Accounts

Committee has not yet considered this recommendation as of November 3, 2023)

Status—Partially Implemented

The Ministry of Health set a formal requirement for tobacco enforcement officers to perform routine inspections of all retail locations that sell tobacco and vapour products once per fiscal year, rather than based on risk (e.g., historically non-compliant retail locations). Additionally, tobacco enforcement officers do not consistently conduct routine inspections as required by the Ministry.

We found the Ministry updated its enforcement manual in 2022 to require tobacco enforcement officers to perform routine inspections of all retailers once per fiscal year. However, as shown in **Figure 2**, these inspections are not occurring consistently as expected—officers did not inspect over a quarter of retailers in three of the last four years.

Figure 2—Tobacco and Vapour Product Routine Retail Inspection Statistics by Fiscal Year

| Fiscal Year | Retailers | Retailers Inspected at Least Once | Retail Locations Not Inspected | Percentage of Retailers Not Inspected | Total Inspections ^A |
|-------------|-----------|-----------------------------------|--------------------------------|---------------------------------------|--------------------------------|
| 2018–19 | 1,116 | 176 | 940 | 84.2% | 176 ^B |
| 2019–20 | 1,187 | 866 | 321 | 27.0% | 890 |
| 2020–21 | 1,197 | 973 | 224 | 18.7% | 1,001 |
| 2021–22 | 1,232 | 913 | 319 | 25.9% | 955 |
| 2022–23 | 1,248 | 895 | 353 | 28.3% | 1,018 |

Source: Adapted from information provided by the Ministry of Health.

^A Includes routine, follow-up, demand, and complaint based inspections, but does not include youth test shopper visits.

^B This is the first year routine inspections were completed.

We analyzed data on routine inspections conducted between April 2021 and June 2023 and found tobacco enforcement officers missed inspecting 203 retailers in 2022–23 and 159 retailers in 2021–22 (i.e., at least once each fiscal year).

Since our initial audit, the Ministry tried to conduct routine inspections for all retail locations every fiscal year, but was unable to reach this target with current staffing resources. At June 30, 2023, there are three tobacco enforcement officers responsible to conduct both youth test shopper and routine retailer inspections at more than 1,200 retail locations across Saskatchewan.

The Ministry needs to consider whether its target for an annual inspection is attainable with the current number of tobacco enforcement officers employed, or whether it should consider a risk-based approach to inspections. Such an approach could help to alleviate missed inspections by tobacco enforcement officers, as they would not need to conduct routine inspections at each retail location every fiscal year, instead focusing on higher risk locations (e.g., new retail locations, retailers with past infractions).

By not inspecting retail locations within expected timeframes, there is a heightened risk that retailers inappropriately display and sell tobacco and vapour products. Adopting a risk-based approach in setting the frequency of routine inspections could help the Ministry allocate resources to the most risky or non-compliant tobacco and vapour product retailers.



3.5 Key Enforcement Communications Sent Timely

We recommended the Ministry of Health work with the Saskatchewan Health Authority to deliver warning letters and notices of violation to non-compliant retailers selling tobacco or vapour products to minors in a reasonable timeframe. (2021 Report – Volume 2, p. 97, Recommendation 5; Public Accounts Committee has not yet considered this recommendation as of November 3, 2023)

Status—Implemented

The Ministry of Health updated its enforcement manual to establish a reasonable timeframe to deliver warning letters and notices of violation to non-compliant retailers. Tobacco enforcement officers may deliver warning letters/notice of violations at the time of inspection or up to three weeks after identifying an infraction.

We tested 24 youth test shopper inspections with infractions and found that, other than one letter, tobacco enforcement officers delivered the required letters consistent with established timeframes. Four inspections did not require these letters because the tobacco enforcement officer issued a summary offence ticket instead as they found infractions and the retailers had past violations.

We found the Ministry did not require, and the tobacco enforcement officers did not consistently keep, copies of these letters within the IT system for tracking enforcement activities. We suggest the Ministry require officers to keep copies of key inspection communications in its IT system, which would aid the Ministry in monitoring whether key inspection communications occurred and contained appropriate information.

Sending timely warning letters and notices of violation can help to reduce the risk that retailers continue to break the law by selling to minors.

3.6 Guidance Provided, But Complaint Resolutions Not Always Timely

We recommended the Ministry of Health provide clear guidance to the Saskatchewan Health Authority on handling complaints related to the sale and promotion of tobacco and vapour products. (2021 Report – Volume 2, p. 102, Recommendation 7; Public Accounts Committee has not yet considered this recommendation as of November 3, 2023)

Status—Partially Implemented

The Ministry of Health updated its enforcement manual to include sufficient information and timeframes on handling complaints related to the sale and promotion of tobacco and vapour products. However, tobacco enforcement officers do not consistently meet these timeframes with complaints often left unresolved for long periods.

The Ministry's enforcement manual outlines requirements for tobacco enforcement officers to initiate follow-up of complaints within two days and, based on the circumstances of the infractions, endeavour to resolve them within one week of receipt. For complaints including

accusations of sales to youth, the Ministry expects tobacco enforcement officers to try resolving them as soon as possible.

Regarding complaint resolution, the manual provides some flexibility, as tobacco enforcement officers may need to perform a youth test shopper or retail inspection to resolve the complaint. Doing so may require additional time for scheduling and finding youth test shoppers. In addition, the manual gives officers discretion in following up on anonymous complaints. The Ministry requires tobacco enforcement officers to enter all complaints into the IT system, including complaint resolution. We found the Ministry's guidance reasonable.

We tested five out of the 57 complaints made between July 1, 2021, and June 30, 2023. We found tobacco enforcement officers:

- Initiated follow-up on all complaints within two business days, as expected, for all five complaints. Action taken by officers to resolve complaints appeared reasonable.
- Resolved three complaints within one week.
- Resolved two complaints beyond one week (i.e., within 11–84 days). One complaint had a reasonable explanation documented for the delay (e.g., attempted several times to contact the complainant without a response); the other complaint did not have an explanation noted in the IT system.

We also analyzed all 57 complaints received and identified untimely (i.e., not within one month) complaint resolution. We found:

- Two anonymous complaints received, but not resolved timely. Tobacco enforcement officers resolved one complaint in 84 days and the other was not resolved during our audit (outstanding for 245 days at June 30, 2023).
- For the remaining 55 complaints, tobacco enforcement officers resolved the complaints within a range of 1–508 days. We found 24 of these complaints outstanding for greater than one week, including 13 outstanding for more than one month.
- Tobacco enforcement officers did not document reasons for the delays in the IT system for 14 out of 15 complaints outstanding for longer than a month.

In August 2022, the Ministry provided a new report to the Saskatchewan Health Authority showing complaints outstanding for more than six months. However, it did not require the Authority to explain reasons for why the complaints were not resolved timely or document such in the IT system. In addition, the Ministry has not provided the Authority with this report since August 2022.

By not investigating complaints in a timely manner, there is an increased risk that retailers will continue to not comply with requirements and sell products illegally (e.g., selling tobacco and vapour products to youth).



3.7 Reporting Improved, But Certain Information Still Needed

We recommended the Ministry of Health enhance written reports on enforcement activities (e.g., complaints, trends) given periodically to senior management relating to tobacco and vapour products. (2021 Report – Volume 2, p. 105, Recommendation 8; Public Accounts Committee has not yet considered this recommendation as of November 3, 2023)

Status—Partially Implemented

The Ministry of Health improved its reporting to both Ministry and Saskatchewan Health Authority senior management, but further enhancements are required.

Figure 3 outlines the specific information reported quarterly to senior management at the Ministry and the Authority relating to the tobacco and vapour enforcement program, including reporting enhancements made since our initial audit.

Figure 3—Quarterly Reporting to Senior Management and the Authority

Youth Test Shopper Inspections:

- Total retailers subject to youth test shopper inspections
- Number and percentage of retailers visited at least once (target 100%)
- Number of youth test shopper visits
- Number of non-compliant retailers
- Number of products purchased
- Number of summary offence tickets issued
- Non-compliance rate for current year
- **5-year trend of non-compliance rates^A**
- **5-year trend of percentage of retailers visited at least once^A**

Routine Retail Location Inspections:

- Total number of retailers
- Number and percentage of retailers with at least one inspection
- Total number of inspections
- Top five retailer infractions (e.g., signs respecting legal age not displayed)

Specialty Vape Shop Inspections (reported separately, but included in overall routine retail location inspection statistics):

- **Total number of specialty vape shops^A**
- **Number and percentage of specialty vape shops with at least one inspection^A**
- **Total number of inspections^A**

Source: Ministry of Health tobacco and vapour enforcement program quarterly report.

^A Reporting added since our initial audit in 2021.

While the Ministry now provides information on year-over-year trends for youth test shopper inspections, there is no trend analysis including explanation of changes, reasons for targets not achieved, or description of strategies considered to improve compliance rates.

In addition, the quarterly reports do not include information about the status of non-compliant retail locations with youth test shopper reinspections, or how long it took tobacco enforcement officers to reassess these locations. The quarterly reports also do not include key information about routine retail location inspections, such as the number of non-compliant retailers, non-compliance rates, or year-over-year trends.

Finally, the reports lack information about the number and type of complaints received or resolved.

As noted in **Section 3.3** and **Section 3.6**, the Ministry provided the Authority with new reports in August 2022 including information about overdue youth test shopper inspections and reinspections, along with complaints outstanding for more than six months. However, the Ministry has not provided the Authority with these reports since August 2022. Additionally, the Ministry did not report this information to its own senior management.

By not providing sufficient information to senior management at both the Ministry and the Authority on key enforcement activities and strategies to address non-compliance, decision makers may not have adequate information to determine whether the enforcement approach is working as intended or to make appropriate adjustments.

