

Tobacco, Vapour and Smoke Protocol, 2021

Ministry of Health
June 2021

Preamble

The Ontario Public Health Standards: Requirements for Programs, Services, and Accountability (Standards) are published by the Minister of Health under the authority of section 7 of the *Health Protection and Promotion Act* (HPPA) to specify the mandatory health programs and services provided by boards of health.^{1,2} The Standards identify the minimum expectations for public health programs and services. Boards of health are accountable for implementing the Standards including the protocols and guidelines that are referenced in the Standards. Protocols are program and topic-specific documents incorporated into the Standards which provide direction on how boards of health shall operationalize specific requirement(s) identified within the Standards.

Purpose

The purpose of this protocol is to provide direction to each board of health. The board of health shall enforce the *Smoke-Free Ontario Act, 2017* (SFOA, 2017) including all the requirements with respect to the:

- Prohibition on selling and/or supplying tobacco and vapour products to persons under age 19;
- Prohibition on selling tobacco and vapour products in certain places;
- Prohibition on selling improperly packaged tobacco and vapour products;
- Posting of required signs;
- Restrictions on selling flavoured tobacco and vapour products;
- Restrictions on selling vapour products with nicotine concentration levels >20 mg/ml;
- Prohibition on selling tobacco and vapour products in vending machines; and
- Prohibitions on the smoking of tobacco, the use of electronic cigarettes to vape any substance, and the smoking of cannabis.³

Ontario Regulation 268/18 made under the SFOA, 2017 is relevant to this protocol.^{3,4}

The *Tobacco, Vapour and Smoke Protocol, 2021* (or as current) aligns with the Ministry of Health's (the "ministry") comprehensive approach to tobacco control. More information on comprehensive tobacco control to support chronic disease prevention can be found within the *Tobacco, Vapour and Smoke Guideline, 2021* (or as current), *Substance Use Prevention and Harm Reduction Guideline, 2018* (or as current) and the *Chronic Disease Prevention Guideline, 2018* (or as current).⁵⁻⁷

Reference to the Standards

This section identifies the standards and requirements to which this protocol relates.

Effective Public Health Practice

Requirement 9. The board of health shall publicly disclose results of all inspections or information in accordance with the *Consumption and Treatment Services Compliance and Enforcement Protocol, 2021* (or as current); *Food Safety Protocol, 2018* (or as current); the *Health Hazard Response Protocol, 2018* (or as current); the *Infection Prevention and Control Protocol, 2018* (or as current); the *Infection Prevention and Control Complaint Protocol, 2018* (or as current); the *Infection Prevention and Control Disclosure Protocol, 2018* (or as current); the *Recreational Water Protocol, 2018* (or as current); the *Safe Drinking Water and Fluoride Monitoring Protocol, 2018* (or as current); the *Tanning Beds Protocol, 2018* (or as current); and the *Tobacco, Vapour and Smoke Protocol, 2018* (or as current).

Substance Use and Injury Prevention

Requirement 3. The board of health shall enforce the *Smoke-Free Ontario Act, 2017* in accordance with the *Tobacco, Vapour and Smoke Protocol, 2018* (or as current).

Operational Roles and Responsibilities

Inspection

The SFOA, 2017 regulates the smoking of tobacco products, the use of electronic cigarettes to vape any substance, and the smoking of cannabis to protect the people of Ontario, especially youth, from the harms of tobacco, the harms of vapour products, and the harms of second-hand cannabis smoke.³ The SFOA, 2017 also regulates the sale and supply of tobacco and vapour products (e.g., e-cigarettes, including heat-not-burn devices, e-cigarette components, and e-substances), and the display and promotion of tobacco products, tobacco product accessories, and vapour products.

All enclosed workplaces, enclosed public places and other specified places that are required to be smoke- and vapour-free under the SFOA, 2017 may be subject to an inspection.³ The board of health shall enforce the SFOA, 2017 at all places regulated under the SFOA, 2017 including tobacco and vapour product retailers, schools, residential care facilities, hospitals, bars and restaurants, places of entertainment, tobacconists, specialty vape stores, and other regulated places.³

Restricting youth access to tobacco and vapour products is an integral part of the SFOA, 2017 comprehensive tobacco control program aimed at preventing children and youth from starting to use tobacco and vapour products.³ With the exception of

Cannabis Retail Stores (within the meaning in the *Cannabis Licence Act, 2018*), the board of health shall inspect tobacco and vapour product retailers in its public health unit area to assess compliance with youth access restrictions under the SFOA, 2017.³ For the purpose of conducting inspections, the board of health shall hire youth test shoppers who are between 15 and 18 years of age to attempt a purchase of tobacco or vapour products. To inspect retailers which are not permitted to admit persons under 19 years of age (e.g., specifically stores or bars), the board of health may hire youth test shoppers between 19 and 24 years of age.

The board of health shall ensure that two test shops are conducted annually on each tobacco retailer for compliance with the ban on sale to persons under 19. With the exemption of Cannabis Retail Stores, the board of health shall ensure one test shop is conducted annually on each vapour product retailer for compliance with the ban on sale to persons under 19.

The board of health shall ensure that one inspection is conducted annually on each tobacco retailer for compliance with the rules for displaying and promoting tobacco products and tobacco product accessories under the SFOA, 2017.

With the exemption of Cannabis Retail Stores, the board of health shall ensure that one inspection is conducted annually on each vapour product retailer for compliance with the rules for displaying and promoting vapour products under the SFOA, 2017.

The board of health shall ensure that one inspection is conducted annually on each secondary school for compliance with the prohibitions under the SFOA, 2017.³

The board of health shall ensure that two inspections are conducted annually on all indoor Controlled Areas where smoking or vaping is permitted under the SFOA, 2017.³

The board of health shall respond to all complaints about non-compliance with the SFOA, 2017 and take compliance or enforcement action, as appropriate.³

Signs

The board of health shall inspect tobacco and vapour product retailers and smoke- and vapour-free places for compliance with the signage requirements in the SFOA, 2017.³

Enforcement Activity

The board of health shall use a compliance strategy that employs a balance of education, inspection and progressive enforcement. “Progressive enforcement” means the use of warnings and graduated charging options to reflect the frequency and severity of the level of non-compliance.

With respect to Cannabis Retail Stores, the board of health shall coordinate enforcement activity with Alcohol and Gaming Commission of Ontario (AGCO) inspectors. For example, if there is a complaint about underage sales, the board of

health should contact AGCO and request they inspect for compliance with the *Cannabis Licence Act, 2018*.

Specialty Store Registration and Inspections

The board of health shall ensure tobacconists and specialty vape stores in its catchment area meet inventory/sales requirements of the SFOA, 2017 through an annual registration process.³ The board of health shall maintain up-to-date records of all registered tobacconists and specialty vape stores in its catchment area and shall ensure registered tobacconists meet the conditions for the display, promotion and vapour product testing (i.e., activation) exemptions, and registered specialty vape stores meet the conditions for the display, promotion and the testing/sampling exemptions, through regular inspections.

Data Collection and Reporting

The board of health shall collect and maintain up-to-date inspection and enforcement data using the Tobacco Inspection System (TIS) or otherwise as directed by the ministry.⁸ A record of every enforcement activity conducted for the purpose of determining compliance with the SFOA, 2017, including the Canada Revenue Agency (CRA) business number of the retail establishment being inspected, details about education visits, inspections, warnings issued and charges laid, and convictions shall be recorded and synchronized within one business day in TIS.^{3,8} The board of health shall be responsible for ensuring the accuracy of the data.

Administration of the Notice of Prohibition Against the Sale, Storage and Delivery of Tobacco Products (Automatic Prohibition)

The board of health shall inform the ministry that a Notice of Prohibition is required when the requisite number of tobacco sales offence convictions is obtained. The board of health shall serve (i.e., deliver) and enforce the Notice of Prohibition issued by the Minister of Health (or his/her delegate). In addition, if a tobacco sales offence is observed and results in the laying of charges, a Tobacco Sales Offence Notification must be issued to the owner of the retail establishment where the offence took place within 48 hours of laying the charge.

Authority of an Inspector

The ministry administers the appointment of inspectors under the SFOA, 2017.³

The board of health shall recommend the appointment of inspectors under the SFOA, 2017 to the ministry.³

The board of health shall ensure that inspectors comply with any restrictions set out in the SFOA, 2017 or their appointment.³

Education and Training

The board of health shall ensure that all inspectors appointed under the SFOA, 2017 are trained appropriately with ministry sanctioned training within one year of appointment.³

Public Disclosure of Convictions

The board of health shall publicly disclose a summary report of all retailer/owner convictions related to tobacco sales offences and vapour product sales offences.

For the purposes of public disclosure, the following offences under the SFOA, 2017 shall be reported:

- Subsection 3 (1) or (2)
- Section 7
- Section 8
- Subsection 10 (1)
- Subsection 22 (4).³

For the purposes of public disclosure, the following offences under the *Tobacco Tax Act* shall be reported (when the board of health is aware of such convictions):

- Section 8
- Section 29.

The board of health shall ensure conviction reports are posted on the board of health's website in a location that is easily located by the public. Boards of health shall ensure that conviction reports are updated every 30 days to include any new retailer/owner convictions that boards of health have become aware of during that timeframe. Conviction reports must be posted on the board of health's website for five years.

TIS can generate the required convictions report and the format of reports can be adapted to match the visual style of the board of health's websites. Boards of health are encouraged to integrate the required content described below into existing public disclosure programs.

The convictions report shall contain at a minimum:

- 1) The legal name, the operating name and address of the premises where the offence was committed (including street number, street name, city, postal code);
- 2) The date of the conviction; and
- 3) The type of offence (e.g., SFOA, 2017 Section 3(1) Sell tobacco to a person who is less than 19 years old).³

The board of health shall ensure that the ministry supplied disclaimer for prospective buyers of tobacco retail premises is posted on the board of health's website in the same

location where the SFOA, 2017 convictions report is posted.³ This disclaimer is available through the TIS Convictions Report.

In cases where convictions are appealed, the board of health shall revise the posted report with additional information or post a subsequent report as soon as possible.

The board of health shall ensure that all posted reports are compliant with relevant legislation including the *Accessibility for Ontarians with Disabilities Act* (AODA), the *French Language Services Act* (FLSA) (if applicable), and *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).⁹⁻¹¹

References

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2. *Health Protection and Promotion Act*, RSO 1990, c H.7. Available from: <https://www.ontario.ca/laws/statute/90h07>
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