

RAW LEAF TOBACCO OVERSIGHT IN ONTARIO: A DISCUSSION PAPER

To support Ministry of Finance (MOF) oversight of raw leaf tobacco, a draft regulation under the province's *Tobacco Tax Act* (TTA) has been prepared. The regulation sets out the requirements for registration, reporting, and compliance. This discussion paper is intended to help interested parties understand the draft regulation and to invite feedback.

The proposed regulation and this discussion paper are posted on the Ontario Government "Regulatory Registry" website for comment and input. The regulation can be accessed at <http://www.ontariocanada.com/registry/>. This discussion paper is meant to add information about what the proposed regulation means to interested parties.

On October 1, 2012 MOF assumed oversight of raw leaf tobacco growing in the province. A grace period has been provided until January 1, 2015, to allow for outreach to interested parties and to share more information about the registration process.

Oversight of raw leaf tobacco will help effectively manage and monitor the movement of tobacco throughout the tobacco products' supply chain and will help impede the flow of untaxed tobacco products, which undermines the government's health and tax integrity objectives.

Raw leaf oversight *is not about imposing new taxation* – it's about effective monitoring. Provincial tobacco tax only applies to tobacco once it is in a state where it may be consumed (e.g. cigarettes, cigars or fine cut tobacco). The tax does not apply to the growing or processing of raw leaf tobacco.

Ontario's Interests

Through Ministry oversight of raw leaf tobacco, Ontario is hoping to achieve an environment where:

- The Ministry has oversight of the full tobacco production chain;
- The Ministry can prevent and address situations of unregistered tobacco growing/selling;
- Tobacco manufacturers or processors only purchase from those who are registered with the Ministry;
- A sustainable business environment is maintained;
- First Nations' ceremonial and spiritual use of tobacco is respected;
- Personal growing of small amounts of tobacco for own consumption is allowed; and
- Growing for educational, research or pharmaceutical purposes is allowed.

Objectives

This discussion paper has been prepared to highlight details in the proposed regulation concerning the oversight of raw leaf tobacco in Ontario. The Ministry wishes to hear from key stakeholders such as tobacco growers, First Nations partners, and industry specialists, to promote raw leaf tobacco oversight that will be as effective and efficient as possible.

The Ministry's goal is to undertake an engagement process that:

- Shares information about the Ministry's interests and objectives in raw leaf tobacco oversight;
- Invites feedback from Ontario's tobacco industry and from First Nations;
- Allows for respectful discussions; and
- Identifies considerations and decisions the province may address in further discussion.

Raw Leaf Tobacco: An Overview

The province of Ontario is Canada's largest tobacco-growing region. In the 2013 growing season approximately 23,000 acres were used to grow flue-cured tobacco resulting in the production of about 55 million pounds of flue-cured tobacco. Various types of tobacco are grown in Ontario, including "Virginia" flue-cured, dark-fired/dark-cured (e.g. "black"), and burley tobacco. Black tobacco is mainly used in cigars, while burley tobacco is primarily used in cigarettes sold to the U.S. market.

Flue-cured tobacco represents more than 90% of all raw leaf tobacco grown in Ontario. All, or nearly all, of the raw leaf tobacco contained in cigarettes that are sold in Ontario is flue-cured tobacco.

In the proposed regulation, raw leaf tobacco means:

- All varieties of tobacco plants grown in or brought into Ontario, including flue-cured, dark-fire-cured/dark-air-cured (also known as "black") and burley tobacco; and
- All states of the raw leaf tobacco being grown (other than seedlings) or that has grown. This includes tobacco plants in the field (not processed at all), and the leaves and stems of a tobacco plant that have been partially or fully processed.

In Ontario there are approximately 250 growers (producers) of flue-cured tobacco and an estimated 50 growers (producers) of other tobacco. There are also a number of tobacco dealers. A dealer sells the tobacco to a buyer, such as a tobacco manufacturer. There are also importers, exporters, and transporters of raw leaf tobacco in Ontario. Raw leaf oversight means that each participant receiving and transferring raw leaf tobacco will require permits and registrations to do so.

The Flue-Cured Tobacco Growers' Marketing Board

Currently, oversight of the growing of flue-cured tobacco and the buying from the grower is regulated by the Ontario Flue-Cured Tobacco Growers' Marketing Board (the Board), through its annual regulations. Under Board authorities, flue-cured tobacco is licensed and a licensed grower can only produce tobacco when there is a licensed buyer identified to purchase that tobacco.

Inspections of raw leaf tobacco growers ensure that the contracted amount of tobacco is grown and sold. Growers are required to keep detailed records of their crops, production, and sales, to ensure that extra yields of tobacco are not sold off to manufacture illegal tobacco products. An investigation may occur if this is suspected.

Effective January 1, 2015 the Ministry of Finance will assume the full responsibility for the oversight of raw leaf tobacco including the licensing of registrants, inspections and investigations as required. No fees will be payable by registrants to the Ministry.

Ministry of Finance Oversight

The *Tobacco Tax Act* (TTA) was amended by the *Supporting Smoke-Free Ontario by Reducing Contraband Tobacco Act, 2011* to include provisions for the Ministry to regulate raw leaf tobacco. The raw leaf tobacco provisions added to the TTA came into force in October 2012, with a grace period extending to December 31, 2014. These provisions require the following participants in the raw leaf tobacco industry to obtain a registration certificate from the Ministry:

- Growers (Producers);
- Processors;
- Buyers or sellers who may be, or act on behalf of, manufacturers (dealers) ;
- Exporters or importers of raw leaf; and
- Inter-jurisdictional transporters: those who transport tobacco in or out of Ontario.

Appendix “A” of this discussion paper outlines the proposed registration and reporting requirements that will be involved for different participants in the raw leaf tobacco industry.

The TTA requires all entities involved in raw leaf tobacco industry to hold a registration certificate issued by the Ministry, and to deal only with other entities that hold the appropriate registration certificate issued under the TTA. The Ministry will maintain a listing of all raw leaf registrants.

To enforce the TTA, Ministry inspectors, auditors, and other authorized persons can perform oversight activities including:

- Examining land on which raw leaf tobacco is produced;
- Examining inventory of raw leaf tobacco that may be in the premises or place; and
- Auditing and examining books and records of raw leaf tobacco registrants.

The TTA authorizes the seizure of raw leaf tobacco in specific circumstances. For example raw leaf tobacco may be seized in circumstances where there is evidence that the tobacco is being diverted to a manufacturer who does not hold a registration certificate. In addition, the TTA sets out civil penalties and offences for contraventions of the raw leaf tobacco provisions.

Registration and Responsibilities

Tobacco is an important crop to many Ontario farmers and First Nations, and the Ministry aims to work with growers to support industry sustainability for the families and businesses that grow, process, or purchase and sell tobacco. The Ministry wants to ensure that oversight of tobacco growing does not impose an undue burden on businesses, while also ensuring that an effective regulatory and monitoring regime is in place.

Under the TTA the Ministry will issue registration certificates to applicants that have met the criteria set out in Section 6 of the proposed regulation. It includes a requirement that the applicant holds any other applicable licences, registration certificates or permits under federal or provincial laws to engage in tobacco activity. Appendix “A” of this paper provides further details about registration certificates.

If the Ministry intends to refuse to issue a registration certificate to an applicant, the applicants have the opportunity under the TTA to request a “show-cause” hearing with the Ministry to allow them raise their concerns and request a re-evaluation of their application.

Exemptions from the Proposed Regulation

Tobacco is used for various purposes – not always solely for commercial tobacco products. The raw leaf tobacco provisions in the TTA and the draft regulation are intended to monitor raw leaf tobacco used for commercial purposes. For that reason, the draft regulation contains exemptions from the requirement to obtain a registration certificate. These exemptions are discussed below.

Personal Use Exemption

Section 3 of the draft regulation contains a personal use exemption. This exemption would allow an individual to grow raw leaf tobacco for personal use, provided the individual does not grow more than 15 kilograms in the year, without obtaining a registration certificate.

Tobacco Research and Seed Production

Educational institutions grow tobacco and use tobacco for teaching and/or research purposes. Section 4 of the draft regulation would provide an exemption that would allow these institutions to grow or acquire raw leaf tobacco without obtaining a registration certificate. This exemption would not apply to agronomic research related to the manufacturing of tobacco products.

Section 5 of the draft regulation would provide an exemption that would apply to raw leaf tobacco produced using seeds with a novel trait (see Seeds Act, (Canada)).

First Nations

The Ministry recognizes and respects that tobacco is used for ceremonial or cultural purposes by First Nations individuals and communities. Beginning in 2012, the Ministry has been engaged in discussions with various First Nation leaders and communities about distinguishing between tobacco produced for ceremonial and cultural use, versus tobacco used for commercial manufacturing purposes. The Ministry hopes that First Nation partners will continue this discussion by providing feedback on the draft regulation, especially regarding traditional and ceremonial use.

Registration Certificates

In general the TTA requires anyone involved in raw leaf tobacco to register with the Ministry. Section 6 of the draft regulation sets out the criteria a person must meet before a registration certificate will be issued by the Ministry. This includes that the person provides the Ministry with all the information the Ministry requires as part of the registration process.

Section 7 of the draft regulation sets out the circumstances that would allow the Ministry to suspend or cancel a registrant's registration certificate. These circumstances include situations where the registrant has provided false or misleading information during the registration process or the registrant fails to comply with the Act or the regulation.

If the Ministry intends to suspend or cancel a registrant's registration certificate, under the TTA the registrants have the opportunity to request a "show-cause" hearing with the Ministry to allow them to raise their concerns and request a re-evaluation of the Ministry's intention.

Section 8 of the draft regulation sets out that a person who intends to destroy raw leaf tobacco, must first notify the Ministry.

Section 9 of the draft regulation requires a person to notify the Ministry if there are changes to any information provided by the person to the Ministry that relates to raw leaf tobacco. This includes information provided during the registration process.

Under the authority in TTA, the Minister will require reports from persons registered under the raw leaf regime. Appendix “A” attached to this document provides an overview of what will be required by registrants with the Ministry. Additional information will be forthcoming through the Ministry’s website.

Implementing and Overseeing the Regulation

Once the regulation comes into effect, the Ministry of Finance will be responsible for enforcing and updating the regulation as necessary. Further details about the transition from the Marketing Board to the Ministry will be forthcoming after the proposed regulation is made.

Key measures for oversight of raw leaf tobacco will include educational opportunities for registrants or prospective registrants; inspections and investigations information about potential violations of the Act or the regulation; and administrative support for current and prospective registrants.

Instructions for response - Your comments are welcome

The Ministry of Finance welcomes your feedback to assist with the creation of an effective system of raw leaf tobacco oversight. Your response may take the form of a letter, an email response or you may complete the enclosed template. Discussion questions are posed below for consideration.

Discussion Questions:

- Are there aspects of raw leaf regulation and oversight that are missing from the current draft regulation?
- How can the Ministry most effectively provide information and education to registrants about their obligations under the proposed regulation?
- Should the Ministry of Finance include a definition of raw leaf tobacco grown and used for First Nations ceremonial and cultural purposes?
 - Comments will be accepted until October 20th, 2014
 - Respond through Canada Post to the following address by regular mail or by email to the address included below:

<p style="text-align: center;">Ontario Ministry of Finance Program Policy and Analytics Branch</p> <p style="text-align: center;">33 King Street West, 3rd Floor Oshawa, Ontario, Canada L1H 8H5</p> <p style="text-align: center;">Email: MOF-PPAB@ontario.ca</p> <p style="text-align: center;">Fax: 905-433-5952</p>

To find out more about tobacco in Ontario, please visit the Ministry of Finance’s website, at: <http://www.fin.gov.on.ca/en/tax/tt/rawleaf.html>