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# Canada Gazette

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## Promotion of Tobacco Products and Accessories Regulations (Prohibited Terms)

*Statutory authority*

*Tobacco Act*

*Sponsoring department*

Department of Health

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### REGULATORY IMPACT ANALYSIS STATEMENT

*(This statement is not part of the Regulations.)*

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#### **Description**

Tobacco use is the most important preventable cause of premature death and chronic disease in Canada. According to a study on substance abuse in Canada, there were 37 000 deaths attributable to smoking in 2002.

Despite a reduction in smoking prevalence in recent decades, there were still close to 5 million smokers in 2005, which represents 19% of the population aged 15 years and older. Half of long-time smokers will die of a smoking-related disease, such as lung cancer, emphysema and heart disease. Some of these diseases are almost exclusively caused by tobacco use: about 90% of all cases of lung cancer are attributable to smoking.

The public health problem posed by tobacco use is unique, since most smokers are addicted and it is not feasible or practicable to prohibit the supply of tobacco because of the likelihood of triggering major contraband and civil disobedience problems. In order to help address this national public health problem, Parliament adopted the *Tobacco Act* in

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1997.

Canada's tobacco control efforts began soon after the publication of the first studies in the 1950s linking smoking with lung cancer. Shortly after, the 1962 Royal College of Physicians Report in the United Kingdom and the 1964 U.S. Surgeon General's Report conclusively linked tobacco use to health problems, particularly lung cancer.

In the 1960s and 1970s, manufacturers introduced new design features to cigarettes, such as vent holes in the filter and increased porosity of the paper along the tobacco column. The vent holes, consisting of one or more rings of small perforations in the filter, allowed ambient air to dilute the mainstream smoke as it passed through the filter. And by increasing the paper porosity, more ambient air could get mixed with the mainstream smoke along the tobacco column. Manufacturers used terms such as "light" and "mild," and variations thereof, to describe brands of cigarettes with air-diluted mainstream smoke.

Cigarettes described as "light" and "mild" have been very popular in Canada for more than 25 years. In 2005, 58% of smokers reported consuming cigarettes that displayed a "light" or "mild" term. In the same year, "light" or "mild" terms were displayed on the packaging of 133 of 307 cigarette brands (or 43% of the cigarette brands), 24 of 160 (fine-cut) cigarette tobacco brands, 10 of 28 brands of tobacco sticks (kits), and 5 of 27 brands of cigarette tubes sold in Canada.

The impact from changes in cigarette design and manufacturing over the last 50 years, such as the addition of features that increased the air dilution of mainstream smoke, were examined in a report published by the U.S. National Cancer Institute in 2001. The authors found that the epidemiological and other scientific evidence, including patterns of mortality from smoking-caused diseases, does not indicate a benefit to public health from these changes.

This finding verifies what is known of the smoking process. Most smokers are addicted to nicotine. Smokers smoke cigarettes in order to obtain the amount of nicotine that they need to sustain their addiction, and since these nicotine needs vary, smokers smoke cigarettes differently. They do so by adjusting how they smoke each cigarette, for example by changing the puff frequency or the puff volume. Tobacco smoke is a complex chemical mixture; as smokers satisfy their nicotine needs, they repeatedly expose themselves to over 4 000 chemicals. The harm to the smokers' health comes from this repeated exposure; what matters is not so much a cigarette's smoke emissions output (often referred to as the nominal yield, based on standard smoking machine conditions) but what emissions each individual smoker takes in and metabolizes. In other words, the harm is determined by the interaction between the smoker and the cigarette, not the cigarette characteristics alone. It follows that cigarettes displaying the terms "light" and "mild" are as harmful to a smoker as cigarettes that do not display these terms.

The Department of Health has found that a significant proportion of smokers mistakenly believe that a tobacco product which displays the terms "light" or "mild" is less harmful to their health. A 2005 study of smokers of "light" or "mild" brands of cigarettes indicated that 25% believed "light" and "mild" brands were less harmful to their health, while 22% smoked "light" and "mild" brands because they believed that there was a reduced risk to their health. An earlier survey, conducted in 2003, showed that 37% of smokers of "light" or "mild" brands had switched from a "regular" brand for health reasons. In that same study, 30% of smokers of "light" and "mild" brands said, without being prompted by the

interviewer, that the "light" descriptor meant less tar and nicotine, while 15% said (again, unaided) the same for the "mild" descriptor.

The Department of Health is proposing regulations pursuant to the *Tobacco Act* that would prohibit the use of the terms "light" and "mild," variations in their spelling (e.g. lite), abbreviations (e.g. XL for extra light) and modifiers of those terms (e.g. ultra light). Other parts of speech and grammatical forms of the terms "light" or "mild" (e.g. lightest or milder) would also be prohibited if used in the context of the proposed Regulations.

Further, the prohibition would cover the promotion of tobacco products and branded accessories which display the terms "light" and "mild." ("Accessory" is defined in the *Tobacco Act* as a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches.) The proposed Regulations would prohibit the use of the terms in advertisements of a tobacco product. It would also be prohibited to package a tobacco product in a package which displays the terms. As well, a branded accessory could not be sold if it displayed the terms. Finally, a tobacco product or branded accessory could not be displayed for retail sale if the terms are on the packaging of the product or accessory.

The proposed Regulations would apply equally to cigarettes, (fine-cut) cigarette tobacco, kreteks (a tobacco-and-clove cigarette, usually made in Southeast Asia), bidis (a thin cigarette of tobacco rolled in a dry leaf, usually made in South Asia), tobacco sticks, cigarette papers, cigarette tubes and filters.

The removal of the terms "light" and "mild" supports one of the objectives of the *Tobacco Act*, that is, to reduce inducements to smoke. Research suggests that many smokers who otherwise would have quit, may be continuing to smoke and be less inclined to make serious smoking cessation efforts under the false belief that smoking "light" and "mild" cigarettes would result in a less negative impact on their health. In order to reduce smokers' confusion, these proposed Regulations will ensure that smokers are not led to believe, erroneously, that "light" and "mild" cigarettes are less hazardous to their health.

The proposed Regulations would not modify the construction (i.e. ingredients and design features) of the products currently on the market; the only change would be around the removal of the terms "light" and "mild."

A ban on the use of the terms "light" and "mild" in connection with tobacco products already exists in more than 40 countries. These include Australia, Brazil, Chile, India, Israel, Peru, Thailand, Venezuela, the 27 countries of the European Union, and the countries that form the European Free Trade Association, such as Norway and Switzerland.

It should finally be noted that the World Health Organization Framework Convention on Tobacco Control, an international public health treaty ratified by Canada in November 2004, encourages parties to adopt and implement effective packaging and labelling measures to prohibit the promotion of tobacco products by any means that are false or misleading, including any term or descriptor such as "light" or "mild."

### ***Alternatives***

*(1) Status quo*

The Department of Health has concluded that the terms "light" and "mild" are misleading. Given the large number of smokers misled, the Department of Health believes that the status quo is not in the interest of public health and is thus not an acceptable alternative.

*(2) Public education campaign*

The Department of Health issued a consumer warning in 1999 which stated that "light" and "mild" tobacco products had the same potential to be debilitating and lethal as other types of tobacco products. In 2001, the Department of Health also developed public awareness material and ran two commercials on television with the message "Light and mild? Deceptive and deadly." In a 2002 survey, only 10 % of those interviewed recalled, unaided, either of the two television commercials, although just over 40% recalled either commercial when prompted. When asked what the main message of the two commercials was, 53% of people who saw the first commercial and 40% who saw the second one said that smoking is dangerous, and 26% and 14%, respectively, said that "light" and "mild" cigarettes are poisonous or dangerous.

The Department of Health has concluded that developing and executing another public education campaign regarding the terms "light" and "mild" would be a costly solution, and by itself would not be fully effective in achieving the Government's objectives. The public education campaign would have to be on-going in order to continuously inform those who smoke "light" and "mild" cigarettes or those who are thinking of smoking "light" and "mild" cigarettes, and its message would lack effectiveness without the complementary measure of a prohibition of the terms "light" and "mild."

*(3) Product standards*

It has been suggested that a product standard could define the quantity of toxic emissions that would be present in the smoke of different types of cigarettes, in order to allow the continued use of the terms (e.g., "ultra light", "light", "medium" or "regular"). Currently, there is no consensus in the scientific community that establishing a composition standard for smoked tobacco products is feasible or that it would result in a health benefit. Given this situation, this alternative would not be as effective in achieving the Government's objective as the one proposed.

*(4) Package health warnings specific to the terms "light" and "mild"*

A 2005 study which tested the effectiveness of light- and mild-specific health warnings on cigarette packages found that these messages had minimal effect on smokers' knowledge or beliefs about smoking "light" and "mild" tobacco products. It also found that such specific health warnings may even increase confusion by emphasizing the "light" or "mild" terms. Overall, this alternative would not be as effective in achieving the Government's objective as the one proposed.

**Benefits and costs***Benefits*

Removing the terms "light" and "mild" would remove a source of confusion. The largest public health benefits associated with such removal would come from those smokers who currently believe that tobacco products described as "light" or "mild" are less harmful; research suggests that the removal of the terms "light" and "mild" will help some of them move to quitting smoking altogether.

## Costs

### Costs to Industry

In order to assess the costs of the proposed Regulations to industry, two questionnaires were developed: a first questionnaire for manufacturers and importers and a second one for other potentially affected parties such as retail associations, growers, printers and unions. To facilitate response, an overview of the anticipated regulations was included in the questionnaires. Questionnaires were distributed to stakeholders in the spring of 2006.

The intent of this exercise was to give stakeholders the opportunity to provide input on the potential costs of the proposed Regulations. Responses were received from manufacturers and importers (four responses), growers (one), unions (one), printers (one) and retail associations (two). However, only manufacturers and importers provided estimates of expected costs, and these estimates varied. The costs for those that did reply were extrapolated to the rest of the market, as appropriate.

In November 2006, shortly after the survey was administered, the Competition Bureau announced agreements with the three major cigarette companies regarding the removal of the "light" and "mild" descriptors, or variations thereof, from their cigarette packaging. Each company agreed to phase out these descriptors (79 brands of cigarettes and 18 varieties of fine-cut tobacco in total) by July 31, 2007. The agreements were signed with the understanding that they would remain in effect until regulations prohibiting these descriptors are made under the *Tobacco Act*. The Commissioner of Competition is seeking similar agreements with smaller companies.

These agreements mitigate the overall costs associated with the proposed Regulations. By the time they come into force, the three major companies will have already removed "light" and "mild" terms from their cigarette and fine-cut tobacco packaging. However, smaller manufacturers, which account for approximately 10% of cigarette sales, will be affected by the proposed Regulations.

The costs to industry comprise the cost of new packaging and the costs of destroying old non-compliant packages which display the prohibited terms. The Department of Health estimates that less than 30 brands will be affected by the proposed Regulations. Therefore, the costs to industry associated with the proposed Regulations are estimated to be less than 3 million dollars.

### Costs to Government

The costs incurred by the Government in order to ensure that the terms "light" and "mild" have been removed would be for undertaking compliance and enforcement activities. These costs are anticipated to be \$50,000 per year for the first two years after implementation, for a total of \$100,000. The enforcement activities and costs associated

with these activities would be expected to decrease drastically after two years, once it has been established that the terms have been removed according to the proposed Regulations. Activities after two years would include checks to ensure that the terms do not reappear and would be one more item that compliance and enforcement personnel look for when completing routine inspections.

### ***Consultation***

A government notice was published in the *Canada Gazette*, Part I, on December 1, 2001. This notice sought public input in the development of proposed Regulations to prohibit the display of "light" and "mild" terms on tobacco product packaging. The notice specified a 45-day consultation period during which interested parties were invited to submit comments. A total of 35 submissions were received from various stakeholders. Generally, views expressed by industry stakeholders were against the proposal, whereas those received from the public health community were in support.

#### *Non-governmental organizations*

The Canadian Coalition for Action on Tobacco Control, the Non-Smokers' Rights Association, Physicians for a Smoke-Free Canada and the Canadian Cancer Society have each presented submissions calling for the removal of "light" and "mild" from tobacco product packaging.

#### *Industry*

The Department of Health held meetings with industry stakeholders on this issue, starting in 2001. A meeting was held with the three largest companies in 2003 to discuss the "light" and "mild" issue in more depth. A meeting with the same three companies took place in September 2006, where an overview of the proposed Regulations was provided along with estimated timelines for the coming into force and implementation of the proposed Regulations.

In 2006, as mentioned above, surveys were sent out to stakeholders requesting their input into the cost estimates associated with the proposed Regulations. Two tobacco companies responded with letters which provided information beyond cost assessment data. One company stated that the Government should "get on with it" and move forward with adopting reasonable regulations.

### ***Compliance and enforcement***

Compliance monitoring and enforcement of the Regulations will be undertaken by the Department of Health under the authority of the *Tobacco Act*.

Every person who contravenes the proposed Regulations is liable to one of the following:

- on summary conviction, a fine not exceeding \$50,000 or imprisonment for a term not exceeding six months, or both;
- on summary conviction, a fine not exceeding \$100,000 or imprisonment for a term not

exceeding one year, or both, or on conviction on indictment, a fine not exceeding \$300,000 or imprisonment for a term not exceeding two years, or both; and

- on summary conviction, a fine not exceeding \$300,000 or imprisonment for a term not exceeding two years, or both.

Compliance with these requirements will be monitored through inspections that will be undertaken to ensure that the terms "light" and "mild" are not used, in accordance with the *Promotion of Tobacco Products and Accessories Regulations (Prohibited Terms)*.

### **Contact**

Ms. Christine Belle-Isle  
Manager  
Regulations Division  
Office of Regulations and Compliance  
Tobacco Control Programme  
Healthy Environments and Consumer Safety Branch  
Health Canada  
Address Locator 3507C1  
123 Slater Street  
Ottawa, Ontario  
K1A 0K9  
Fax: 613-941-1551  
Email: [pregs@hc-sc.gc.ca](mailto:pregs@hc-sc.gc.ca)

### **PROPOSED REGULATORY TEXT**

Notice is hereby given that the Governor in Council, pursuant to section 33 ([see footnote a](#)) of the *Tobacco Act* ([see footnote b](#)), proposes to make the annexed *Promotion of Tobacco Products and Accessories Regulations (Prohibited Terms)*.

Interested persons may make representations with respect to the proposed Regulations within 75 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Christine Belle-Isle, Manager, Regulations Division, Office of Regulations and Compliance, Tobacco Control Programme, Healthy Environments and Consumer Safety Branch, Health Canada, MacDonald Building, Address Locator 3507C1, 123 Slater Street, Ottawa, Ontario K1A 0K9 (fax: 613-941-1551; e-mail: [pregs@hc-sc.gc.ca](mailto:pregs@hc-sc.gc.ca)).

Ottawa, July 30, 2007

MARY O'NEILL  
*Assistant Clerk of the Privy Council*

### **PROMOTION OF TOBACCO PRODUCTS AND ACCESSORIES REGULATIONS (PROHIBITED TERMS) INTERPRETATION**

Definition of "cigarette"

**1.** In these Regulations, "cigarette" includes any roll or tubular construction that contains tobacco and is intended for smoking, other than a bidi, cigar, kretek or tobacco stick.

**APPLICATION**

Scope of prohibitions

**2.** The prohibitions in these Regulations that apply with respect to the terms "light" and "mild" also apply to  
 (a) any variations in spelling of those terms as well as other parts of speech and grammatical forms of those terms and variations in spelling of those terms; and  
 (b) any modifiers of those terms, including "extra" and "ultra", as well as any abbreviation of those terms or modifiers.

**PROMOTION**

**GENERAL**

No promotion if terms on product

**3.** (1) No person shall promote a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters if the tobacco product displays the term "light" or "mild" or promote such a tobacco product by affixing to it the term "light" or "mild".

No promotion if terms on packaging

(2) No person shall promote a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters if the package of the tobacco product displays the term "light" or "mild".

No promotion if terms on accessories

(3) No person shall promote  
 (a) an accessory that displays a brand element of a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters and that displays the term "light" or "mild"; or  
 (b) a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters by affixing to an accessory a brand element of such a tobacco product if that accessory displays the term "light" or "mild".

**ADVERTISING**

No advertising of product with terms

**4.** No person shall promote a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters by using the term "light" or "mild" in an advertisement of the tobacco product.

**PACKAGING**

Packaging

**5.** No person shall package a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters, or have it packaged by a third party, in a package that displays the term "light" or "mild".

**SALE**

No sale of accessories with terms

**6.** No person shall sell an accessory that displays a brand element of a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters and that displays the term "light" or "mild".



## DISPLAYING AT RETAIL

- |   |   |
|---|---|
| No retail display of products with terms    | <b>7.</b> (1) No person shall display, at retail, a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters if the term "light" or "mild" is displayed on the tobacco product. |
| No retail display of accessories with terms | (2) No person shall display, at retail, an accessory that displays a bidi, cigarette, kretek or tobacco stick, or cigarette tobacco, cigarette papers, tubes or filters and that displays the term "light" or "mild".     |

## COMING INTO FORCE

- |                  |   |
|------------------|---|
| Registration     | <b>8.</b> (1) Subject to subsection (2), these Regulations come into force on the day on which they are registered.       |
| Sections 6 and 7 | (2) Sections 6 and 7 come into force on the day that is 120 days after the day on which these Regulations are registered. |

[31-1-o]

### [Footnote a](#)

S.C. 1998, c. 38, s. 3

### [Footnote b](#)

S.C. 1997, c. 13

### **NOTICE:**

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with hypertext language (HTML). Its content is very similar except for the footnotes, the symbols and the tables.

  
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