

**CALIFORNIA DEPARTMENT OF JUSTICE**

**TITLE 11. LAW**

**DIVISION 1. ATTORNEY GENERAL**

**CHAPTER 11. UNFLAVORED TOBACCO LIST**

**STD 399 ATTACHMENT A**

**Fiscal Impact Statement**

**Section B – Fiscal Effect on State Government**

As explained below, the Department estimates that revenue generated by application fees will roughly cover the Department’s costs for operating and maintaining the Unflavored Tobacco List (UTL).

**Product Submission Estimates**

The number of unique tobacco products that will be submitted for inclusion on the initial publication of the UTL and in subsequent years is uncertain. Some Manufacturers and Importers may choose not to submit their products to the UTL based on information not available to the Department, e.g., because the products are impermissibly flavored, because they require but lack authorization from the United States Food and Drug Administration (FDA), or because they are not sold in sufficient numbers to justify application for placement on the UTL.

The Department has estimated the number of potentially eligible tobacco products from multiple sources, including publicly-available records of authorized tobacco products maintained by the FDA; product listings on the California Tobacco Directory; the tobacco directories of other states, including e-cigarette and vape directories like those in Alabama and North Carolina; public and commercial databases that track and collect identifiable stock keeping units; and consultations with industry participants.

Based on these sources, the Department anticipates total submissions of approximately 7,415 unique Tobacco Products, with a significant share of total stock keeping units to be predicate and variant cigars that fall outside of the statute’s “Premium Cigar” classification. (See Health & Safety Code, § 104559.5(a)(13) [defining “premium cigar”]; Health & Safety Code, §§ 104559.5(e), 104559.1(s)(3) [excluding premium cigars from flavor ban and eligibility for UTL].) The Department estimates approximately half of submissions will be for a predicate product that require a \$300 per-product application fee, and half will be for variations of the predicate that qualifies for the \$150 per-product fee, totaling approximately \$1,668,300 in expected revenue for Fiscal Year 2025-2026.

As the UTL is new, it is difficult to predict future reenrollment behavior. Company decisions to enroll (or reenroll) will depend on a variety of considerations. As the number of authorized unflavored tobacco products is relatively stable but growing, the Department anticipates there will be some annual turnover in the UTL as Manufacturers and Importers elect to list new or

different products, but the overall number of listings are likely to remain stable. To this end, the Department estimates that Manufacturers and Importers of approximately 10% of the tobacco products submitted to the UTL in Fiscal Year 2025-26 will not re-certify those tobacco products in Fiscal Year 2026-27, but that an equal number of previously unsubmitted products will be submitted to the UTL in FY 2026-27 as either a predicate product or variation of that predicate. Thus, the Department estimates that of the approximately 7,415 unique tobacco product applications will be submitted in FY 2026-27, approximately 5% (or 371) will be for underlying products that require a \$300 per-product application fee (\$111,300), and 5% (or 371) will be for variant products that qualify for the \$150 per-product fee (\$55,650), totaling approximately \$166,950 in fee revenue for newly submitted tobacco products. The Department estimates the remaining 90% of products (6,673) will be renewals that require \$150 renewal fee, equaling a total revenue estimate of \$1,000,950 for renewed products. Thus, the total estimated fee revenue for Fiscal Year 2026-2027 is approximately \$1,167,900. The Department estimates the same fee revenues for Fiscal Year 2027-2028, approximately \$1,167,900.

### **Program Cost Estimates**

The estimated annual fiscal expenses for the UTL are broken down on the following charts. The Department notes, however, that program costs are dependent on a number of unknown factors, including the total number of tobacco products that Manufacturers and Importers will submit for inclusion on the UTL (which, as explained above, is uncertain despite the Department's best estimates), as well as the number of products submitted to the UTL that appear to be falsely certified as unflavored and therefore require additional Department resources to investigate and potentially adjudicate. Because existing law permits the Department to assess penalties against wholesalers, distributors, and delivery sellers under subdivision (o)(3) of section 104559.1 of the Health and Safety Code, the Department does not forecast any additional recovery of penalties as a result of these regulations during the current or subsequent two fiscal years. The Department further notes that the January 10, 2025 Budget Change Proposal (BCP), 0820-107-BCP-2025-GB, identifies the additional positions required by the Department to operate and maintain the UTL, rather than the full operational and maintenance costs of the program. The charts below identify the Department's estimate of the full operational and maintenance costs of the program, including the costs of positions identified in the BCP and of additional positions within existing Department resources that are expected to be utilized for UTL work.

Program Costs for Fiscal Year 2025-26							
Start-up Costs	Title	Positions	Months/ Hours	Annual Salary+Benefits	Annual OE+E	Annual Indirect	Total Position Cost
	DAG IV	1.0	12	244,368	41,416	42,295	328,079
	Assoc. Gov't Program Analyst	1.0	12	122,253	13,862	21,339	157,454
	IT Spec. I		420	19,304		3,027	22,331
	IT Spec. II		420	25,560		4,008	29,568
Subtotal		2.0		411,485	55,278	70,669	537,432

Regular Costs	Title	Positions	Months/ Hours	Annual Salary+Benefits	Annual OE+E	Annual Indirect	Total Position Cost
	DAG IV	2.0	12	488,736	82,832	84,590	656,158
	Assoc. Gov't Program Analyst	1.0	12	122,253	13,862	21,339	157,454
	IT Spec. I	1.0	12	137,240	23,002	25,115	185,357
	Legal Secretary	1.0	12	88,643	11,912	15,763	116,318
	Crime Analyst I		48	1,896		297	2,193
Subtotal		5.0		838,768	131,608	147,104	1,117,480
<b>Total</b>		7		1,250,253	186,886	217,773	1,654,912

Program Costs for Fiscal Years 2026-27 and 2027-28						
Title	Positions	Months/ Hours	Annual Salary+Benefits	Annual OE+E	Annual Indirect	Total Position Cost
DAG IV	2.0	12	488,736	122,832	84,590	696,158
Assoc. Gov't Program Analyst	1.0	12	122,253	13,862	21,339	157,454
IT Spec. I	1.0	12	137,240	23,002	25,115	185,357
Legal Secretary	1.0	12	88,643	11,912	15,763	116,318
Crime Analyst I		95	3,753	-	588	4,341
<b>Total</b>	5.0		840,625	171,608	147,395	1,159,628