

ILLEGAL TOBACCO TASK FORCE

Public Meeting #59 Minutes

Meeting Date: Wednesday, February 28, 2024

Meeting Time: 1:00 pm

Meeting Location: Zoom conferencing, dial (646) 558-8656, Meeting ID# 850 2145 3599, Passcode 640770

Board Attendance: John Hayes (DOR), Lieutenant Colonel Brian Connors (MSP), Jackie Doane (DPH), John Melander (EOPSS), Nicole Nixon (AGO), and Dan O'Neil (TRE).

Public Attendance: 28 attendees

Call to Order:

- Mr. Hayes called the meeting to order at 1:15 PM. Mr. Hayes informed all participants that this meeting will not be recorded by Zoom and that Cole Doherty-Crestin will take notes to complete the minutes, which will be posted to the Task Force website.

Opening Remarks:

- Mr. Hayes thanked everyone for attending and Task Force members introduced themselves. Mr. Hayes indicated the purpose of today's meeting is to vote on the final draft annual report.

Approval of Minutes from Meeting #58 on February 1, 2024:

- Cole Doherty-Crestin emailed a copy of the minutes for Meeting #58 to Task Force members prior to this meeting. Mr. Hayes asked members if there were any recommended edits to be made and hearing none, he asked for a motion to approve. Dan O'Neil and Jackie Doane approved the motion. Mr. Hayes stated that with no objection, the minutes were approved and will be posted to Task Force website.

Review & Final Vote RE Annual Report - Due March 1, 2024

- Mr. Hayes emailed a final copy of the annual report to Task Force members for review prior to this meeting. Mr. Hayes noted that an additional paragraph, which highlights enforcement activity conducted by the Massachusetts State Police during February 2024, was added to the Summary of Task Force Activities section of the draft report and that no other changes were made since the previous meeting. Mr. Hayes read the additional paragraph to board members and asked whether there was any objection to including the paragraph. Hearing none, Mr. Hayes asked whether there were any questions regarding the draft report prior to moving to voting. Hearing none, Mr. Hayes conducted a roll call vote asking each board member whether they voted "yes" or "no" to approve the report. All board members, representing the Massachusetts State Police, Department of Public Health, Executive Office of Public Safety and Security, Office of the State Treasurer, Office of the Attorney General, and Department of Revenue, voted "yes" to approve the report. Mr. Hayes stated that the report will be submitted to the Legislature and made available on the Task Force website tomorrow, February 29, 2024.

Member Agency Updates & Other Business

- During meeting #57 held on January 11, 2024, the Department of Public Health (DPH) provided a presentation to the Task Force on the impacts of the Massachusetts flavored

tobacco law. Note that the presentation is attached to the Public Meeting #57 Minutes, which is available on the Task Force website.

- Mr. Hayes stated that the Task Force received a letter on February 14, 2024 from Northeast Wholesalers Association in response to DPH's findings. Mr. Hayes forwarded the letter to board members prior to this meeting. The letter provides material context on the data used in the presentation and Northeast Wholesalers Association concluded that critical data was absent in DPH's analysis. The letter is provided at the end of this document. Mr. Hayes provided an overview of the letter and asked Jackie Doane (DPH) whether she had any comment. Jackie stated that DPH stands by its data and statements included in the presentation.
- No other updates were reported by members.

Closing Remarks

- Mr. Hayes stated that a final copy of the report will be distributed to board members following this meeting. Mr. Hayes kindly thanked participants for their attendance and asked whether there was a motion to end the meeting. John Melander and Nicole Nixon approved the motion. Mr. Hayes concluded the meeting at 1:25 PM.



February 14, 2024

Commonwealth of Massachusetts
Department of Revenue
Illegal Tobacco Task Force
(via email)

President
Jeff Allen
National Convenience
Distributors
Farmingdale, NY

Co-Chair Hayes, Co-Chair Connors and Members of the Task Force,

**Vice President/
Comptroller**
Barry Margolis
Cooper-Booth
Wholesale
Mountville, PA

I am V.J. Mayor, CAE, the Executive Director of the Northeast Wholesalers Association (NEWA), representing wholesale businesses throughout the Northeastern United States, many of which are family owned and operated.

Vice President
Mike Kelley
Core-Mark
Gardiner, ME

At the January 11, 2024 meeting of the Illegal Tobacco Task Force (ITTF), the Department of Public Health (DPH) presented their findings on the impacts of the Massachusetts flavored tobacco law. We are writing this letter to provide material context on the data used in their presentation and to note that critical data was absent. In particular, 1) DPH did not cite comprehensive tax paid sales data, and 2) DPH did not disclose data on population prevalence of menthol cigarette use.

**Vice President/
Secretary**
Kyle Feldman
National Convenience
Distributors
Farmingdale, NY

DPH reaches the wrong conclusions on cross-border activity due to its incomplete marketplace data

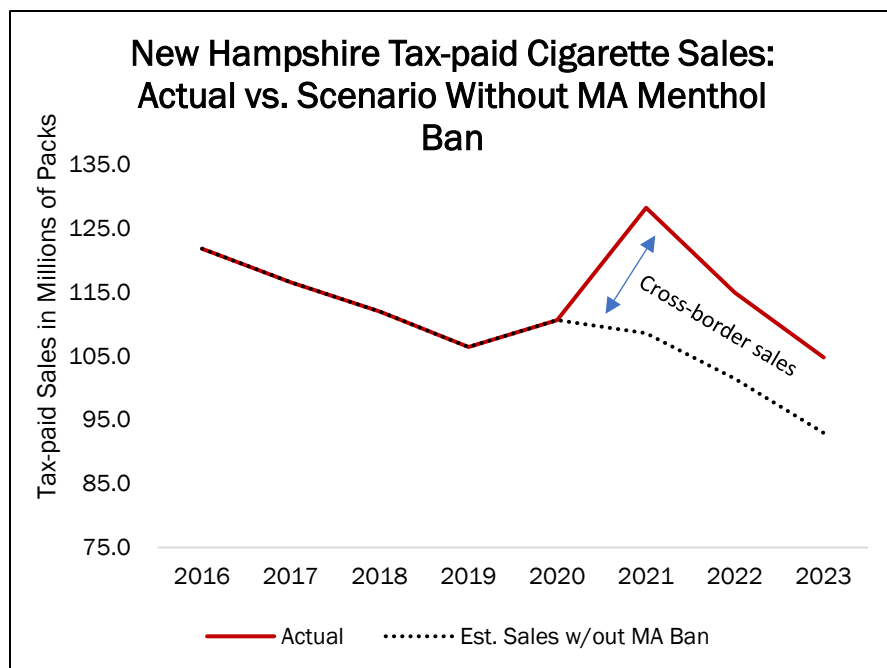
Executive Director
VJ Mayor, CAE
NEWA Office
Portland, ME

In its presentation, DPH used data from Nielsen IQ and Circana. By their own admission, these data only capture 25% of convenience store sales, and are generally only a window into chain stores. Instead of using partial sales data, DPH should have looked into cigarette tax stamp sales from state departments of revenue, which provide a complete picture of legal cigarette sales and are, therefore, a far more reliable way to track consumer behavior.

Complete tax stamp sales data clearly indicate significant cross-border activity from the menthol ban. A simple request for stamp sales data from New Hampshire's department of revenue shows a sizable cross-border impact that is sustained throughout the duration this policy has been in place (see chart below).¹ New Hampshire tax stamp sales continue to be higher than they otherwise would have been had Massachusetts not banned menthol cigarettes.

¹ Data collected from New Hampshire Department of Revenue and reported by Orzechowski & Walker, The Tax Burden on Tobacco, vol. 58. Estimated trend dotted line 2021-2023 on graph is based on national trends.

New Hampshire authorities are well-aware of the robust product movement. On January 11, 2023, New Hampshire Department of Revenue Administration presented a Joint Economic Briefing to the NH House and Senate Ways and Means committees where they reference both “cross-border elasticity” and “availability of menthol and flavored tobacco products that are banned in Massachusetts” as factors that contribute to the state’s tobacco tax revenue.



Notably, the following statement was made during that presentation:

“It’s important to note, I think if you actually look at the number of [packs of cigarettes] that we send... it would probably be very jarring if we were to actually consume all of those cigarettes here, we would probably have a severe public health crisis.”

This is clear evidence of just how well-known it is that there is sustained cross-border movement of flavored products in the Northeast, and attempts to obfuscate this fact are disingenuous.

DPH omits data on population use of menthol cigarettes post-ban

DPH’s presentation is also absent of results from important questions asked in the Massachusetts Behavioral Risk Factor Surveillance System (BRFSS) about use of flavored tobacco, e.g., “how often do you smoke menthol cigarettes?”² The survey has asked this question since 2019, which begs the question, why have the results not been shared so that the public can understand how the ban has influenced actual behavior?

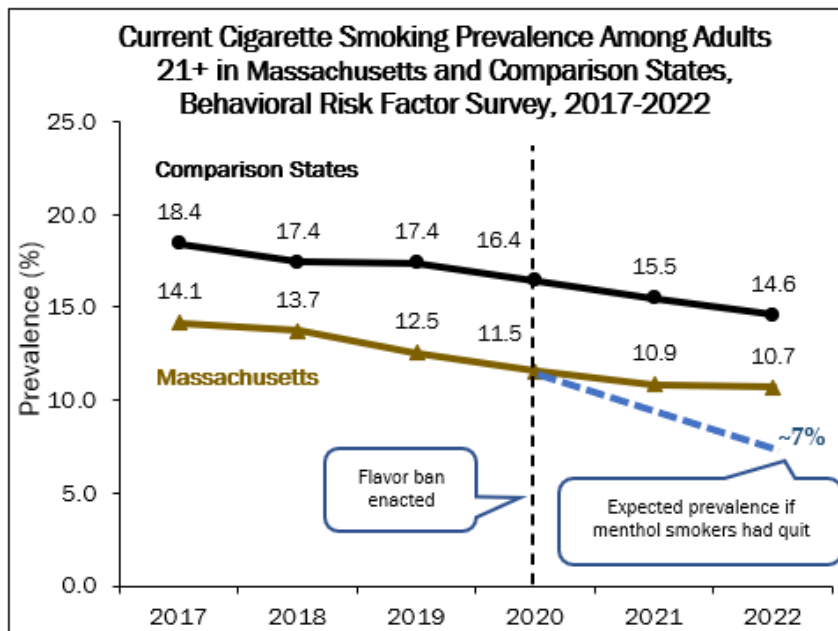
A more complete look at population prevalence does yield interesting findings from what is already publicly available. The chart on the next page³ compares adult (age 21+) smoking prevalence in Massachusetts against states that did not have a flavor ban in place during the same time periods. From examining the chart, it is apparent that the flavor ban in Massachusetts had no discernible impact on

² Behavioral Risk Factor Surveillance (BRFSS) questionnaires, Department of Health. <https://www.mass.gov/lists/behavioral-risk-factor-surveillance-brfss-questionnaires#2019->

³ Chart provided by Altria Client Services LLC based on data from BRFSS. Comparison states consisted of 42 states and Washington, DC, and excluded Florida and New Jersey due to gaps in survey years, California, Colorado, Illinois, Minnesota, and New York, due to local-level menthol flavor bans.

adult smoking rates relative to states without the flavor ban policy. It is also clear that Massachusetts' smoking prevalence is much higher than where it might have been if every menthol smoker had quit in response to the ban. If indeed there was no cross-border movement of product as DPH says, Massachusetts smoking prevalence should be approximately 7% of adults, when in fact it is 10.7%.

The task force's work on illicit trade is not done



In conclusion, we are concerned DPH selectively picked data that supports their policy preferences and the quality of their data is not sufficient to overturn what the task force has known well since the flavor ban was enacted: there is sizable cross-border trade of tobacco products from non-flavor ban geographies into Massachusetts.

VJ Mayor, CAE