

## **Illegal Tobacco Task Force Meeting #43 Minutes**

**Meeting Date:** Wednesday, August 4, 2021

**Meeting Time:** 10:30 AM

**Meeting Location:** Dial (408) 418-9388, Meeting ID# 179 5894676 WebEx

**Board Members Present:** Marikae Toye (Co-Chair), Detective Captain Brian Connors (Co-Chair), Patricia Henley, Michael Sweeney, Susan Terrey, Amber Villa, Anna Lumelsky.

### **Call to Order:**

- Meeting was called to order at 10:30am by Mrs. Toye.
- Mrs. Toye informed all participants that this meeting is being recorded by WebEx to aid in the preparation of the minutes only. She indicates that the WebEx recordings will be deleted after the minutes are done, and these recordings will not be used for any other purpose. She advises everyone to please mute to decrease background noise.

### **Opening Remarks:**

- Mrs. Toye thanks everyone for meeting in the middle of the summer for this and indicates this is meeting number 43 that was initially set in June and was rescheduled due to an issue with the Webex License.
- Mrs. Toye made some introductions and there are two new people joining the meeting. Formally joining is Detective Captain Brian Connors who is now representing the Massachusetts State Police on the Task Force and he is replacing Major Fennessy, who retired at the end of June. Detective Captain Connors greeted everyone and says it is a pleasure to be on this Task Force.
- Mrs. Toye states that John Hayes is joining the meeting today. He is the CIB Director at DOR, and he will be representing DOR as Co-Chair of the Task Force in the future. Mr. Hayes thanks everyone and says that he is looking forward to working with everyone on the Task Force.

### **Approval of the minutes for Meeting #42 on May 3, 2021:**

- Mrs. Toye asks about the approval of the meeting #42 Minutes. She indicates that the members should have received a copy of the draft Minutes prior to the meeting and asks for any corrections, edits, or suggestions. She pointed out that she changed the heading in the draft as it had the last meeting number, so that was updated. Hearing none, she asks for a motion to approve. Michael Sweeney makes a Motion to Approve. Sue Terry seconds that motion. Motion passed unanimously by roll call vote..
- Mrs. Toye states that as everyone was aware, this meeting was a time for public comment and there was a request put out for a public hearing on two different topics. Only one request to speak was received and that was from Charles Giblin, who will be speaking in a moment. Mrs. Toye notes that if you have written testimony or information on these topics that you would like to submit, please send them along to her by August 18<sup>th</sup>. Mrs. Toye will first disseminate anything she receives to all members of the Task Force and post anything you provide us as public testimony on the website.

Mrs. Toye indicates her contact information on the website and to feel free to email her with any questions.

**Time for Public Comment:**

- Mrs. Toye refers to Charles Giblin now for his testimony.
- Mr. Giblin greets everyone and says thank you for being able to speak before the Task Force. He indicates he is a retired special agent in charge of the New Jersey Department of Treasury, Office of Criminal Investigation, which is a sworn state law enforcement agency. He states he is going to speak relative to the evidence issues, both in vape, and then the regulatory issues on other tobacco products based on his extensive experience as a 47-year law enforcement veteran career. He is on his last year of office on the board directors of the International Association Chiefs of Police. He has been awarded the lifetime achievement by the Federation of Tax Administrators for leadership in tobacco diversion.
- Mr. Giblin testifies as to the challenges that this Task Force will have in regards to seizing vape products and most of what he will speak about in regards to vape will be for open systems versus the closed systems. He notes he has a background in teaching chemical and biological hazmat in New Jersey for the state police and is very familiar with a lot of the different aspects of that, as well as being an emergency medical technician, knowing about the handling of liquid nicotine and its medical effects. As with any seizure, care and keeping the integrity of the evidence must be maintained. How it is found is also key to handling it. Hopefully it is always kept in its original package, which is also clue to its origin. If you are seizing base elements or chemicals in volume, they need to be handled as carefully, for example liquid nicotine. Mr. Giblin refers to a material safety data sheet and implores whoever is responsible for the evidence facility, to contain material safety data sheets on any of the base materials. He indicates that they may be required under Massachusetts law, and to have those on hand and on the site where the evidence is stored. He states that this is because if liquid nicotine were to be splashed on the skin surface or absorbed, and it will rapidly be absorbed into the skin, will shut down the central nervous system rather quickly and almost immediately based on the size and weight of the individual who is exposed. He asks that the Task Force look at what the fire codes are for Massachusetts and review the National Fire Protection Association standards, as they can be of great value to you. One of the big concerns that New Jersey had was thermal decomposition-which means liquid nicotine can lead to the release of irritating gas and vapors when stored long term, such as while waiting for a case to be adjudicated. New Jersey eventually went to look at fire safety cabinets for the storage of any of the volume products that were seized when it came to liquid nicotine and other based chemicals. He notes you must have all the appropriate personal protective equipment for handling these types of materials. They should not just be readily grabbed off the shelf like you would for a regular carton of cigarettes. For long term handling, if you go to a facility or a store where they are mixing their own products in the back room, as he has heard happens from special agents in New Jersey and from law enforcement in Pennsylvania and other states, where they get headaches etc. from long term exposure to moving and transferring these products. He says to please think about that for your personnel in terms of field operations and storage in your evidence facility.
- Mr. Giblin moves to the next step which would be to having the discussion beforehand with prosecutors. If you are going to present this as evidence in a courtroom, handling it is no different than bringing a loaded firearm into the courtroom. It has procedures, it has necessity in terms of

safety, and you need to have the discussions with prosecutors before you bring it into the courtroom and explain and display for the court to see. He would also strongly suggest keeping batteries and chargers separate. It will make it easier for later destruction and disposal from the actual liquid. He suggests having conversation with the Department of Fire Services in Massachusetts and the Massachusetts Environmental Protection as they would be fruitful. They may be able to give some very good direction in terms of storage, handling, and destruction, so having those conversations beforehand, keeps you safe, keeps you within the law, and makes life a lot easier in the long run in terms of storage, handling, and disposal, not even to talk about the evidentiary side of it and submission of as evidence.

- Also, if you are getting into seizing the counterfeit products, not unlike when we are dealing with counterfeit tobacco cigarettes and cigars, you need to understand that a lot of these products when they come from the mainland China and had the opportunity to go to Hong Kong and see the size of the port, to speak to the Chief Inspector of the Hong Kong national police, when they still existed, before the communist takeover and to understand how the products moved from Guangzhou in mainland and how those underground economies impacted in through Hong Kong, eventually being transferred by ship and cargo internationally, and also by air. There are a lot of these ENDS products come by air. One of the concerns that you will have in the long term is how much of that counterfeit products is making its way into Massachusetts. HIS is a great partner with us in New Jersey. We had special agents assigned as Task Force officers besides joint terrorism Task Force, we know that CBP is only able to inspect a fraction of the product that makes its way into the airports. The IG of Homeland just recently exposed the depth of that problem, so you are not even seeing most of these products being seized by CBP unfortunately. You need to have some coordination with their intellectual property unit beforehand. Establish those relationships early on when you start getting into seizing those products because many of them you are not going to have the contact like you do with the legitimate tobacco manufacturers like Altria, RJR etc. in making determinations on whether something is counterfeit or otherwise adulterated. There are a lot of things to have in terms of consideration as you start to see those products make their way into your state, that they will be flavored products.
- Mr. Giblin states that recently he was in contact with Juul and speaking to them through his work for Altria Services, that they knew Juul is facing a lot of importation from other countries of their products their closed ENDS products that are making their way from Canada across the world, so pay special attention to those things as well, in terms of what you are going to see down the road. I can address questions at any time before I start on uniformity of the other tobacco products. Mrs. Toye asks if anyone has any questions on this part?
- Ms. Henley asks about when Mr. Giblin was talking about thermal decomposition in the long-term storage and asks if that was for mostly the liquid nicotine products or was that also for the closed systems? Mr. Giblin responds that those are for primarily the open products. He says that usually you are not going to find them in glass containers as we might be used to seeing. or shipping, storage, and large mass we have seen them in up to 50-gallon drums almost like milk containers so again, packaging, and thermal decomposition is another concern in storage. Mostly the larger volume of products as opposed to the small seen brown glass bottles that we are used to seeing in the medical, this is more of the nationally shipped product. He asked if this answers her question and she replied yes, thank you.

- Mr. Giblin moves on to uniformity details regarding the collection of revenue on other tobacco products. One of the biggest aspects of other tobacco products is the incredible variety of configurations of the products. Technology is advancing but until accurate stamping is possible, there are other methodologies that revenue agencies can be implementing wither by statute or by regulations. We are lucky in New Jersey to have the regulatory authority under our administrative code. He refers to the new Director and welcomes him aboard and suggests that DOR reach out to the FTA. Their uniformity community committee has done extensive work nationally in creating forms, sample concepts that lend themselves readily to adaptation in any state and may even be able to be adapted as your current law applies. He would suggest if you are going to start moving in that direction and creating a more robust regulatory formula, he would say that you start where requiring the report to be due monthly. Quarterly just doesn't have the impact in terms of follow up and doesn't have the impact in terms of conducting an investigation for compliance and then, potentially, enforcement down the road. It just does not allow you to show where the gaps are and where the holes are in their compliance in terms of number 1, reporting and, number 2, remitting the revenue.
- There are a lot of questions for you to ask internally as to what your current statutes have. If they are being sold at retail directly from a manufacturer, then there's a whole other ball game there, but then if they are being sold in that fashion then the tax should be the responsibility of the retailer, the retailer licensee and he says that he does not know in Massachusetts whether you license all aspects or if it's a registration issue. New Jersey issues license of all tobacco, all vape and all tobacco product retailers, wholesalers, and manufacturers, and even employees of manufacturers who operate in the State of New Jersey. Sales and transfers must be marked to show who is responsible for the tax on the invoice. If you do not do that, then everybody's going to be pointing this way and you just cannot have that. When you start to conduct examinations in this area you never preannounce. This is cold walk in, here's who we are, and we want to see both physical, and if they hold a computer, you want to be able to hold it in your hand and look at it as evidence. It should be able to reflect the product inventory, all sales and it will be important for the investigator or auditor to be able to look at what is available in house available to the business. Pay attention to the invoice that might indicate off the book sales or transfers. We found a very significant problem and that was the counterfeiting of invoices. They were not the legitimate invoices from the wholesaler to the retailer. They just did that to disguise the tax liability and when we went back and executed a search warrant, even though we did not need one, we did get one on the wholesaler whose invoices were involved, we were able to prove they were never issued, they were never part of a legitimate sale, and all those products that they counterfeited the invoices came from the State of Pennsylvania. They can easily manipulate on copy machines and criminal investigators need to look for duplicate invoice numbers, duplicate sale and transfer invoices with the same dollar amounts, the same products. They are just a scheme to hide off the book sales and transfers and will more than likely indicate a larger criminal tax evasion case for DOR on that, not to mention that if the product is not properly taxed, like in New Jersey on the criminal code if it is not taxed appropriately, its prima facie contraband and that is subject to seizure by special agents of New Jersey Treasury. I would say that you also require invoices to be maintained on the premises in a readable form for inspection and not in a summary form, or on the computer so that they should be available immediately during all business hours and we have that written into our regulatory authority, both invoices probably should be made available upon demand by a DOR or MSP agent or CIB investigator while enforcing the tobacco laws. That is the important aspect of having the ability to conduct inspections without a warrant for the purpose of determining

the taxability and the compliance with the tax laws of Massachusetts or, in this case, the tax laws of New Jersey. In his final summary, he would say that the vape side of the house requires diligence as any other traditional tobacco product groups in terms of counterfeiting and in terms of storage. We just have those extra issues in terms of safety and compliance when we are dealing with chemicals and electronic elements as they need special attention and handling. With that I am glad to answer any other questions and hopefully have given you some insight as to how we did things and I thank Altri? And thank you for opportunity to spend time with you today.

- Mrs. Toye thanks Mr. Giblin for his comments and the information. She says that a lot of what she is hearing tracks what she has heard from our counterparts in other states about the challenges both with invoice tracking and technology, which is somewhat lagging from what she understands, and ENDS disposal issues that a lot of people are dealing with, disposal ENDS storage.

**Conclusion:**

- Mrs. Toye states to any members of the public on the phone at this meeting if they would like to submit any additional information, or they would like to respond to anything they heard today, please feel free to email her by August 18<sup>th</sup>. She would expect that another meeting be scheduled sometime early Fall, possibly September or October but she will be stepping down as Co-Chair and John Hayes will be scheduling that meeting as the new Co-Chair.
- Mrs. Toye states that if there is nothing else, is there a motion to adjourn. Michael Sweeney so moves. She further goes on to thank everyone and that this will probably be her last meeting and she appreciates everyone's time and work on this. Thanks to Mrs. Toye are returned by members. Meeting is adjourned at 10:57am.