

Illegal Tobacco Task Force Meeting #42 Minutes

Meeting Date: Monday, May 3, 2021

Meeting Time: 10:30 AM

Meeting Location: Dial (617) 315-0704, Meeting ID# 179 810 4980, WebEx

Board Members Present: Marikae Toye (Co-Chair), Maj. Steve Fennessy (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 advises everyone to please mute to decrease background noise.

Opening Remarks:

- Mrs. Toye thanks everyone for meeting. She states that the year typically starts off with the filing of the Task Force's annual report to the Legislature. That was done on the due date, March 1st and the report has been uploaded to our Task Force website.
- Mrs. Toye States that she received a few questions from members of the industry and various constituents asking if they were expected to bring information to this meeting and expressing interest in providing information. She stated that for both agenda items, she wanted to discuss an action plan and whether the Task Force wishes to solicit specific information from the public or interested parties, as we move forward on those two topics.

Approval of the minutes for Meeting #40 on February 24, 2021 and Meeting #41 on March 1, 2021:

- Mrs. Toye indicated that we had two meetings in a very quick time frame because both meetings 40 and 41 concerned the approval of the annual report. The minutes for both meetings were sent around to the members in advance of the meeting. Mrs. Toye asks if there are any objections and/or edits to the Minutes for Meeting 40. Hearing none, she asks for a motion to approve. Ms. Terrey so moves. Mr. Sweeney seconded the motion. Motion passed by unanimous roll call vote.
- Mrs. Toye asks if anyone has any objections and/or edits to the Minutes for Meeting 41. Hearing none, she asks for a motion to approve. Mr. Sweeney so moves. Ms. Henley seconded the motion. Motion passed by unanimous roll call vote.
- Mrs. Toye notes that the Meeting 40 and 41 minutes, along with the MOU, will be uploaded to the website. The MOU was approved in Meeting 40 and it will be with those minutes on the website so that it can be viewed by the public.

Action plan for disposition of ENDS products:

- Mrs. Toye states that she would like to discuss an action plan for the destruction of vaping products, which are referred to in the current laws as ENDS (Electronic Nicotine Disposal Systems) and are currently being sold and taxed in Massachusetts. Because of the ban on the retail sale of those items,

DOR is beginning to seize ENDS when they are untaxed. DPH is probably seeing seizures as well with flavored ENDS and DOR is communicating with DPH. DOR is currently disposing of cigarettes and other tobacco items by shredding. The ENDS products contain the juice, the liquid, the device and the batteries, some batteries are rechargeable, etc. so these items cannot be destroyed by shredding. DOR is not yet at the point where they have a full storage facility, but Mrs. Toye wants to discuss ahead of time, and to see how we wanted to move forward on this.

- Mrs. Toye indicated that she has called counterparts in other states and did speak to someone in the Criminal Investigations group in New Jersey, as they are a little ahead on this than we are. They started taxing the product a year ahead of us and have had some major seizures. They worked with the Department of Environmental Protection and they have found a way to incinerate the products that satisfies their environmental protection regulators. Mrs. Toye stated that she talked with Pennsylvania a year ago, and they incinerate their product, and they were thinking they would not be able to incinerate the vape products. Incineration is one option, but she is not sure that we will be able to do that in Massachusetts.
- Mrs. Toye states that there are routinely members of the public on this call, and she would like to ask for public comment on this issue. Mrs. Toye asks if any of the members have ideas on this and how to move forward.
- Ms. Villa states that there may be people beyond this call, such as manufacturers, that have probably had to confront this same issue when they have a product they can no longer sell because it may have expired or be a problem with production so it may make sense to reach out to those members of the industry. She states that she knows Altria has frequently attended our meetings, as have other members, to determine how they handle it in house, which may be helpful as a starting point. Mrs. Toye agrees, and she likes the idea of what we did with our public hearing last year and she would like to schedule a meeting 3 to 4 weeks out in June. Before the meeting she would put a notice out to the public asking these questions, and she will also target it by sending to manufacturers and distributors contacts that we have in addition to the distribution list.
- Mrs. Toye asks Ms. Henley is she has any sense of what the local boards of health are doing with vape products and their seizure of same. Ms. Henley responded that, in general, they keep the product for a certain amount of time. She states they have always struggled with how to dispose of any tobacco products, and she is not sure what they would do with ENDS. Ms. Henley also stated that she does not know what the FDA with the evidence DPH sends, she knows that they dispose of it after a certain amount of time, but she does not know how they dispose of it. She indicated that she would investigate this.
- Mrs. Toye explained that inspectors and investigators go out routinely to inspect all the licensed retailers across Massachusetts, and several more inspectors and investigators have been hired in response to the recent ENDS tax and retail flavor ban. They are seeing flavored products that are untaxed and they will then seize the ENDS product. DOR then keeps the product for a period while that is pending. This DOR process is civil and therefore different than the storage and destruction issues presented by products seized by the Massachusetts State Police for criminal cases and the product is held for a much longer period.

- Mrs. Toye says that what she is hearing from the group is that it would make sense to ask for public comments and plan a meeting in June to receive it.

Discussion of Invoicing Technology and strategies for unstamped products (smokeless, cigars, ENDS) discussion of need to gather information:

- Mrs. Toye indicates that when DOR inspectors and investigators go out to retailers, it takes them time to match up products that are on the shelf with invoices showing that the tax was paid. There is a current proposal pending in the budget that came out of this group, to require stamping for smokeless products. There is no requirement that ENDS products be stamped and there is nothing affixed to the product to demonstrate that tax was paid. There are invoices that may or may not be on site, or at a different location, so they are often not produced when asked. Sometimes when they are produced, they could be months old, and it is very difficult to match up the product on the shelf with an invoice showing the tax paid.
- Mrs. Toye would like to see if there is any other invoicing technology that the Task Force should consider recommending. As we know, most states require the stamping of cigarettes, but there have been questions about whether the FDA packaging requirements can be maintained with stamping smokeless. There are a lot of questions around stamping products ENDS products because they are not uniform. Mrs. Toye would like to put out a request for public comment on invoicing technology. Maj. Fennesy states that he thinks this is a great idea.
- Michael Sweeney agrees, and further states that his agency does a lot of work with EOPSS, they may have directly, or in conjunction with some other state agency, tested out maybe a similar type of inventory system that either may already be on state contract, or that Secretary Wood, or a member of his staff, could provide some insight or guidance on just food for thought in your research.
- Mrs. Toye says that she has considered the work done by the Cannabis Control Commission with seed-to-sale tracking and there may be good technology out there that could work for tobacco.
- Ms. Henley states that the European Union was working on stamping of the E-Cigarettes and she will investigate that further. Mrs. Toye lets all the members know that if they have any ideas that they can always send information to her.
- Mrs. Toye indicates that she will schedule this topic for public comment at the next meeting to be scheduled in June.

Update on FY22 Task Force Budget:

- Mrs. Toye that she will be reaching out to the respective agencies about the FY22 Task Force budget. The Task Force received an increase of over \$400k dollars in the budget for FY21, to cover the storage facility that we have now agreed upon with the MOU that will be maintained by the State Police and some additional personnel. For DOR, our new investigator started Monday of last week and is very exciting for us to be able to bring on a second full-time tobacco investigator. In the Governor's budget and the subsequent budgets that came out of the Senate and House, the Task Force is being funded at that same level, just over \$1M of funding. Mrs. Toye lets everyone know if they have any questions regarding the budget to please reach out to her.

Member Updates:

- Mrs. Toye asks if anyone has any member updates.
- Maj. Fennessy notes that responds with an update stating that he visited the storage facility, they are working on security for the facility, it is looking good and moving along.
- Mrs. Toye let everyone know that DOR now has two full-time CIB investigators out doing work and DOR is in the process of hiring additional tobacco inspectors to complete at least one inspection per year. Ms. Henley adds that DPH enforcement folks have been meeting with DOR inspectors and the coordination has been helpful.

Conclusion:

- Mrs. Toye will reach out to everyone about setting a specific date for June.
- Mrs. Toye states that if there is nothing else, she would entertain a motion to adjourn. Mr. Sweeney so moves. Maj. Fennessy seconds that motion. Meeting is adjourned at 10:59am.