

# Illegal Tobacco Task Force Minutes

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**Meeting Date: February 26, 2019**

**Meeting Time: 10:30am**

**Meeting Location:** 100 Cambridge Street, 2<sup>nd</sup> Floor, Conference Room A

**Board Members Present:** Kajal Chattopadhyay (Co-Chair), Maj. Steve Fennessy (Co-Chair), David Solet, Patricia Henley, Michael Sweeney, Amber Villa, Thomas Bocian

**Others:** Dan Less, Evan Garcia, Brenda McConville, Alex Finkel, Scott Delaney, Steven Byrn, Michael D'Ortenzio, Mark Molloy, Dave Cahill, Josh Brabazon, Patrick Johnson, Collins Muniu

## **Call to Order:**

- Mr. Chattopadhyay called the meeting to order at 10:44am and gave a quick recap of the previous meeting.
- Task Force members were asked to review two sets of minutes from the 1/15/19 meeting and the 2/14/19 meeting.
- The Jan. 15 meeting minutes were reviewed first, as a vote to approve them was postponed at the Feb. 14 meeting to allow the Task Force members more time to review them.
  - Motion: Mr. Sweeney
  - Second: Maj. Fennessy
- Ms. Henley raised a few concerns and comments with how certain pieces of data were characterized in the minutes. Although the intent was to inform, the tone felt supportive, and/or in agreement with the data. Mr. Solet also agreed with Ms. Henley's concerns.
- Mr. Sweeney then withdrew his earlier motion to approve the minutes after hearing Ms. Henley's concern and offering his own.
- Mr. Bocian offered a suggestion to add a footnote to the minutes indicating that the Task Force was not endorsing any data contained in the minutes. He verbally provided language to Mr. Chattopadhyay, which Mr. Chattopadhyay transcribed and included as an amendment to the proposed minutes.
- The Task Force agreed with Mr. Bocian's amendment and the voting of the minutes moved forward. Mr. Sweeney reinstated his motion to approve the minutes, with the newly added amendments. Maj. Fennessy maintained his second.
- The Task Force unanimously moved to approve the Jan. 15 minutes as amended and moved on to review the Feb. 14 minutes.
  - Motion: Mr. Sweeney
  - Second: Mr. Solet
- Ms. Villa and Ms. Henley offered some suggested edits to the Feb. 14 minutes, which were incorporated and the minutes were approved unanimously.

### **Housekeeping/Member Updates:**

- At the previous meeting, Task Force members had asked for information regarding location of health warnings on product packaging as it related to the smokeless tobacco stamping proposal. Mr. Chattopadhyay stated he reached out to J. Polep and SICPA for some additional information.
- According to Mr. Chattopadhyay, J. Polep sent over pictures of various smokeless tobacco products. Mr. Chattopadhyay reviewed the pictures and stated that he did not find any smokeless tobacco pucks that had health warnings that would be obstructed by the proposed placement of the stamp. He further stated that there were one or two brands that had irregular packaging that would have to be hand stamped since they could not be stamped by machine.
- Mr. Chattopadhyay also reported that he received information from SICPA regarding the brand types they examined in determining the proposed stamp placement location on smokeless tobacco pucks. According to SICPA, they reviewed six or seven different brands, which represented over 90% of the smokeless tobacco market, based on industry reports.

### **Smokeless Tobacco Stamping Discussion/Vote:**

- As discussion continued regarding product packaging and industry practices, Mr. Solet asked a question to the industry attendees present about whether there is an actual mandate that requires cigarettes to be packaged a certain way or whether that decision was driven by market forces and demands.
- Mr. Finkel with SICPA offered some historical insight that corroborated Mr. Solet's view that market forces gave rise to near uniform packaging in the cigarette market. He stated there will always be outliers in product types that would have to be hand-stamped.
- Mr. Chattopadhyay gave some insight into the revenue analysis prepared by DOR regarding potential revenue gains if the smokeless stamping proposal was implemented. The revenue analysis has been completed and is referred to in the draft Annual Report. The analysis is based on usage rates, data from the CDC and other sources as well as elasticity of demand, which predicts consumer behavior based on product cost.
- Ms. Henley shared that DPH conducted research on OTP packaging across the Commonwealth. According to DPH, there are at least sixteen different smokeless tobacco brands offered for sale in the Commonwealth.

### **Annual Report & Legislative Package Discussion/Vote:**

- A draft of the FY19 Annual Report was sent around to all Task Force members by Mr. Chattopadhyay. He asked all members to weigh in on any edits or suggestions they may have.
- Ms. Henley had previously provided some comments, which were provided to Task Force members in their meeting packets.
- Task Force members moved on to look over Ms. Henley's comments (starting on page 7), which went as follows:
  - Suggestion #1: Changing "surge" to "increase" so that the Task Force's anecdotal evidence isn't over-emphasized.

- Suggestion #2: Adopted changes Ms. Henley suggested relating to the minimum retail price language.
- Suggestion #3: Mr. Solet's suggestion of adding "There was considerable and robust debate among members of the Task Force about the accuracy of the data presented and the validity of the conclusions that followed" to the summary of the industry vaping presentation was adopted.
- Suggestion #3: The commission adopted removing the word "all" from the report in relation to consideration of the smokeless tobacco stamping proposal.
- Suggestion #4: (page 15) Members endorsed edits regarding a stamping allowance as a method to allow stampers to recoup initial equipment and start-up costs relating to implementation of the smokeless tobacco stamping program.
- After reviewing the report, Task Force members turned to reviewing the legislative proposals.
- Ms. Henley suggested amending the "vapor product" definition in the legislative package so that it encompasses nicotine delivery components (like liquid nicotine and gel) and the devices that administer the nicotine.
- The Task Force agreed that DPH and the AGO would work on amended language to discuss at the next meeting.
- Mr. Solet raised the question to the AGO members about the potential risk of litigation if the smokeless tobacco stamping proposal was implemented. He asked the AGO of the financial impact of being sued (essentially, would the loss of a lawsuit outweigh the potential dollar gains of the commission's proposed regulations).
- Ms. Villa stated the AGO did not want to take a stance on future lawsuits as she a) did not know how they would materialize and b) considering that the FDA does not handle tobacco in the same way, some stakeholders may find themselves in violation of the FDA while trying to meet the Commonwealth's requirements. Because of this, Ms. Villa indicated that when the Task Force votes on the proposal, the AGO would abstain.
- Mr. Solet then reiterated to the Task Force that they should weigh the threat of possible litigation against the potential gain of the smokeless tobacco stamping program.
- Mark Molloy (representing McLane) suggested that the Task Force also be aware that a potential lawsuit may not just come from industry participants but also from public health industry organizations.

### **Other Business**

The next meeting was scheduled for March 1<sup>st</sup>.

Meeting was adjourned at 11:49am by Mr. Chattopadhyay.