

Illegal Tobacco Task Force Minutes

Meeting Date: February 14, 2019

Meeting Time: 10:30am

Meeting Location: 100 Cambridge Street, 2nd Floor, Conference Room A

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

Others: Dave Cahill, Scott Delaney, Dan Less, Vincent Piccolo, Brenda McConville, Evan Garcia, Alberto De La Serna, Savannah Kelleher, Maggie Cohen, Michael D'Ortenzio, Mark Molloy.

Call to Order:

- Mr. Chattopadhyay called the meeting to order at 10:43am and gave a brief overview of the last meeting.
- Mr. Chattopadhyay also congratulated now Major Fennessy on his promotion from Detective Captain to Major with the Massachusetts State Police.
- Today's meeting, according to Mr. Chattopadhyay, will focus exclusively on discussion of the smokeless stamping proposal.

Member Updates:

- Ms. Henley of DPH gave an update on DPH's work. It was with much sadness that Ms. Henley reported that former Task Force member Christy Fedor recently passed away.
- The Task Force all offered condolences.
- According to Ms. Henley, POST, the data-sharing platform which enables users to communicate in real-time, has been successfully launched.
- She and Mr. Chattopadhyay are continuing to have discussions about how to make the best use of POST for Task Force investigations.

Minutes:

- Mr. Chattopadhyay called the attention of the Task Force to review the previous meeting's minutes.
- Mr. Sweeney asked that the Task Force have more time to review the minutes and made a motion to postpone approval until the next meeting.
- Ms. Henley seconded the motion to approve at a later date. All approved to postpone the issue until the following meeting.

Smokeless Stamping Discussion:

- Mr. Chattopadhyay opened the discussion with an update on DOR's revenue analysis of implementation of the smokeless tobacco stamping proposal. He stated that he hoped to present it to the Task Force today, but the analysis was not yet ready to be released and was still with A&F for review.
- Mr. Solet asked for clarity on what information was needed to be provided to legislators. Mr. Chattopadhyay stated that the smokeless recommendation could be incorporated into the original legislative packet that was previously submitted to the Legislature.
- Mr. Chattopadhyay focused the discussion on the following topics:
 - FDA Guidance/Federal Issues
 - Mr. Chattopadhyay indicated that further guidance from the FDA was unlikely.
 - Both representatives from the AGO expressed the hesitation of the AGO to endorse the proposal as the FDA provided guidance has been inconclusive.
 - According to the AGO, the potential of litigation is present. Ms. Villa stated that even though she knows they (the FDA) won't give more conclusive answers, the AGO can't vote in favor of the proposal given the information currently before the Task Force.
 - Discussion continued from others of the Task Force about addressing lack of guidance from the FDA. Mr. Solet asked whether it was a catch 22 to wait for answers that may never come.
 - Ms. Henley asked Ms. Villa and Mr. Bocian what causes the most concern for the AGO.
 - Ms. Villa stated that worries included repercussions of improper placement of stamps (which could obscure required federal warnings), potential treatment wholesalers as manufacturers, and the fact the FDA's guidance has not been in writing.
 - Mr. Chattopadhyay stated that SICPA and USI did research on multiple smokeless products to ensure that the stamp is placed in a location that does not interfere with any federal warnings. If some smokeless products had warnings in that location, then they would have to be hand stamped.
 - Cost/Burden/Private Industry
 - Discussion about the impact of OTP stamping on stampers/private industry ensued.
 - Mr. Sweeney asked what kind of impact is the Task Force looking at as it relates to stampers, and what could the Task Force do to mitigate business impact. He stated that it would be useful to know the type of assistance that was offered at the time the encrypted stamping program for cigarettes was rolled out.
 - Mr. D'Ortenzio with J. Polep Distribution offered some insight on the perspective of distributors/stampers in MA. For him, the lack of formal FDA

guidance is a major concern as is the potential regulatory treatment of stampers as manufacturers.

- Another major setback described by Mr. D'Ortenzio was stamper compensation. He asked that compensation be written into the plan for smokeless stamping, as the move will be a costly venture.
- Additional discussion about the market followed, including where wholesalers get their revenue, passing costs to consumers and the ramifications of unintentionally feeding the black market.

○ Final Remarks

- Discussions wrapped, and the Task Force asked Ms. Villa and Mr. Bocian what information they needed that might help address their concerns.
- Ms. Henley asked what factual data could be useful for the AGO.
- Mr. Solet suggested that the Task Force could do further research and provide responses to the AGO's concerns.
- Additional research that the Task Force offered to track down included: examination of smokeless tobacco packaging to determine whether the proposed location of the stamp would obscure any warning labels on any brand packaging; and information from SICPA on the number of product brands they looked at to determine placement of the stamp.

Other Business:

- To make sure concerns were addressed, and to find the answers to questions raised by the Task Force, Mr. Chattopadhyay stated he was happy to make the next February meeting another discussion meeting and to delay any votes until March 1.
- Meetings were set for Feb. 26 and Mar. 1.

Meeting was adjourned at 12:01 by Mr. Chattopadhyay.