



Marikae Grace Toye  
Associate General Counsel  
Massachusetts Department of Revenue  
100 Cambridge Street, 8th Floor  
Boston, MA 02114  
(617) 626-3292

June 12, 2020

**RE: TASK FORCE MEETING 35 PUBLIC COMMENTS**

Dear Ms. Toye,

SICPA Product Security is pleased to provide the following written comments in support of previously made public comments provided to the Commonwealth of Massachusetts Illegal Tobacco Task Force at Task Force Meeting 35 held on June 3<sup>rd</sup>.

The enactment of the Act Modernizing Vapor Control (Act) makes the Commonwealth the first state to enact a comprehensive ban on flavored tobacco products. The Act will have significant impacts in the way cigarettes, electronic nicotine delivery systems (ENDS), and other tobacco products (OTP) are sold and distributed in the Commonwealth. State administrative and compliance resources will require mechanisms to ensure that only legally authorized products continue to be distributed and sold within the Commonwealth. Inspection and enforcement resources in the field will need the means and appropriate tools to quickly and confidently validate that products have been appropriately taxed, conform to the Commonwealth laws of distribution and sale for a retail establishment (licensed tobacco retailer, vapor shop and smoking bar) and are not being made available to minors.

SICPA Product Security has been a key partner to the Commonwealth in the administration and enforcement of cigarettes for more than 30 years. The Department of Revenue (DOR) has utilized the SICPATRACE<sup>®</sup> Encrypted Tax Stamp solution since 2010. This platform has provided the Commonwealth with a comprehensive administrative and compliance solution supporting the Commonwealth's Cigarette and MSA requirements. SICPATRACE<sup>®</sup> combines information technology and material security to enable DOR to uniquely serialize, identify, mark, track and reconcile all cigarette packs that are distributed and sold in the commonwealth to be The platform has been proven to be highly effective, supporting MA DOR in the conduct of more than 4,700 retail inspections annually and the associated verification of more than 360,000 cigarette packs in 2019.

SICPA is pleased to provide additional information on the specific questions regarding ENDS products and flavored tobacco identified by the Task Force as it looks to assess the impacts of the Act. The Task Force has asked for comment and input on a broad set of areas including the potential business impact, black market sales and activity and ability to hold and dispose of seized products. SICPA has focused its response on the specific issue of what technology is available to the Task Force member agencies to address both taxation of ENDS and the enforcement of the flavor ban.

**What technology is available to the Task Force's member agencies to allow us to address both the taxation of vaping products and the enforcement of the flavored tobacco ban?**

Current ENDS products come in a variety of form factors (retail unit shapes, sizes). The ENDS market volume is also currently dominated by a few major manufacturers and brands. Per Technavio's 2019 E-Cigarette Market Report, Juul, NJOY and Blu are the significant products by volume with Juul alone estimated as having a 75 percent market share of the U.S. eCigarette market in 2019. Furthermore, the FDA Premarket Tobacco Product Application (PMTA) submission deadline for ENDS products comes up in September 2020 barring a further stay of that deadline. While the major manufacturers have publicly indicated their intent to submit applications to FDA, based on the rigor required to submit a PMTA, it is very likely that many of the ENDS products offered by small manufacturers or vapor stores will not be covered by a PMTA application and will no longer be authorized under FDA guidelines. The PMTA process and the continued consolidation of market share are therefore likely to drive additional uniformity in ENDS product form factors.

Additionally, stamp application technology is on late development stages to support ENDS stamping using an automated stamping machine. SICPA has already conducted testing with an ENDS stamping machine developed by the equipment manufacturers that currently provide the machines used by wholesalers to support the Commonwealth Cigarette Tax Stamping program. The equipment manufacturers have indicated that a production version of this machine will be available for use by late 2020.

The SICPATRACE® solution, already in use by the DOR for cigarette compliance, is a comprehensive track and trace platform that can easily be extended to provide secure retail unit serialization and marking for ENDS, and other flavored tobacco products, thereby enabling consumers, regulators and enforcement to quickly and confidently differentiate legitimate from illicit products.

The SICPATRACE® solution includes the foundational capabilities necessary to provide the Task Force member agencies with all the necessary tools for administration and compliance of the Act including:

- **Secure marking and serialization:** A secure stamp, containing proven anti-counterfeiting, anti-copy, and tamper evidence features, applied to every retail unit that is designed uniquely for the Commonwealth of Massachusetts. The stamp also has a digital component that

enables it to function as a vehicle of information. SICPA has looked at the various ENDS product form factors offered by the major manufactures to determine a standard defined stamp to be placed on products in a manner that does not intrude on required nicotine addiction warnings, product content information or manufacturer branding.

- **ENDS Product Directory (EPD):** Create and maintain a registry of all ENDS manufacturers, brands and brand variants leveraging the existing SICPATRACE® Tobacco Product Directory. This will enable the Commonwealth to ensure that wholesalers only distribute and sell products authorized as under FDA PMTA and Commonwealth guidelines. The existing Tobacco Product Directory established for Cigarette Master Settlement Agreement (MSA) compliance has proven an effective mechanism for verifying that only Commonwealth authorized brands of cigarettes can be legally distributed and sold in the Commonwealth and can be extended to support similar compliance on ENDS products.
- **Online Activation:** Tracking of the licensed operators stamping the product and activating the secure marks to create traceability for enforcement and recall purposes. This process identifies the specific retail unit of sale being stamped and creates a digital record of the product unit tied to the secure, serialized stamp that is placed on the unit. With this digital record tied to a serialized stamp, the Commonwealth is able to generate reports and conduct analysis on cigarette pack volumes down to the pack level. These tools can provide similar benefits to administration and compliance with ENDS products, including providing reconciliation data to be used for required ENDS tax reporting and payment.
- **Audit tools:** Verification and audit tools to support field enforcement efforts to confidently authenticate and verify the stamp activation information and EPD product status to support compliance with the provisions of the Act. The current SICPATRACE® solution used for cigarettes provides DOR and other Commonwealth agencies with material and digital enforcement tools that enable field inspectors to confirm the authenticity of a stamp, obtain proof of tax compliance and view the digital record/audit trail of the cigarette pack distribution history. These tools can be leveraged for ENDS devices to enable not only these capabilities but also ensure that the product is of a type and flavor/nicotine profile authorized for sale at the specific retail location (e.g., a flavored product should only be observed at a smoking bar).

SICPATRACE® has been in continuous operation for more than 14 years for the State of California and the Commonwealth of Massachusetts, as well as for more than 20 nations around the world, including Canada. Over this time, more than 15 billion stamps have been issued, with no successful attempt at counterfeiting the SICPATRACE® stamp. In its 2019 annual report, the Task Force had previously recommended that stamping be extended to certain categories of OTP based on its own thorough analysis and review of the viability of technology required to support this market. While the impact of the Act on ENDS and flavored tobacco product distribution within the Commonwealth is still to be assessed, the previous findings of the Task

Force that such as solution was technically viable still remain pertinent. Such findings can be extended to the ENDS market as the technology required to secure these products remains the same as the Task Force previously evaluated.

Extending the use of the successful SICPATRACE® program to ENDS and flavored tobacco products will enable the Commonwealth to immediately leverage effective and existing tools and capabilities that have proven successful in helping the Task Force agencies maximize compliance. While there is always concern about being the first state to adopt such a solution or approach, in implementing the Act the Commonwealth is already clearly defined its desire to take first in the nation approach. As stated by Governor Baker at the time of the bill signing, “I do believe sometimes somebody’s got to go first.” He added, “That gives other people an opportunity to follow. I think in this particular case, I do hope other people follow.”

### ***Implementation Options for ENDS***

For Massachusetts, in the near term, SICPATRACE® can quickly be extended to provide secure serialized stamps to mark all ENDS products as being legitimately sourced. Placing the secure, counterfeit-resistant SICPATRACE® stamp on ENDS products can help protect consumer health and safety and enable Commonwealth enforcement by providing an immediately visible and verifiable way to confirm vapor products that are sourced from legal source, Commonwealth-licensed operators. The absence of the secure stamp would immediately alert consumers and enforcement of potential counterfeit or illegally sourced ENDS products.

In the medium term, SICPATRACE® can be extended to include additional data capture and validation on ENDS products consistent with current cigarette enforcement mechanisms. This could include a mandate that all ENDS products be registered in a manner consistent with the Tobacco Product Directory (TPD) currently used with Cigarettes: a new ENDS product directory (EPD). The existing TPD is part of the SICPATRACE® architecture and supports Commonwealth requirements for capturing information on all cigarette manufacturers and their associated brands. By requiring an EPD for ENDS products, the Commonwealth can prevent stamps from being applied to unauthorized products (e.g., only those approved through the FDA PMTA process or under Commonwealth law), obtain visibility into products being offered for sale by manufacturer and brand, and quickly identify all products from a manufacturer should they be subject to recall or cease and desist orders.

Finally, in the long term, the focus would be on continuing to enhance licensee efficiencies and automation through high-speed application of stamps. This would assist stamping agents in minimizing the burden on their operations as they continue to scale the production and distribution of these products. SICPA is already working with the providers of current automated equipment used to apply cigarette tax stamps and there is already a prototype of a machine in testing that will be made available to wholesalers before the end of 2020.

To accelerate the time-to-market given the health crisis underway, SICPA proposes the following capabilities that could most immediately be made available through extension of the current DOR contract to protect public health and empower enforcement against illicit, counterfeit ENDS products.

### **Short Term—Secure Retail Unit Marking**

**Objective:** While there are challenges with the ENDS category in terms of the large variety of manufacturers and package types, as discussed previously the PMTA process and market forces are likely to significantly reduce the variety of ENDS products being manufactured. In the short term SICPATRACE® can support capture of manufacturer information, support the application of stamps by hand on ENDS products and enable an effective way to interrogate and investigate the stamp. This would encompass the following elements:

- 1) **SICPATRACE® Stamp:** Require secure, counterfeit-resistant stamps on ENDS products. This could leverage a similar design to the existing SICPATRACE® stamp and utilize the same robust banknote-grade security features currently provided for cigarettes to enable quick visual identification by consumers of legitimate vape products and enable immediate enforcement action on fake or illicitly sourced ENDS products.
- 2) **Stamp to Licensee Distribution Information Services:** SICPATRACE® currently supports direct ship services where cigarette stamps can be ordered online and sent directly to authorized stamping agents. Currently, DOR has full visibility into stamp orders and can approve or reject stamp orders. This solution captures the distribution of every stamp to licensees and links the stamping agent to the unique identifier on each stamp shipped. The data repository works with any type of stamps and can quickly be set up to support controlled distribution of ENDS stamps issued by both the DOR.
- 3) **Leverage Existing Stamp Inspection Tools:** SICPATRACE® field stamp validation tools currently enable DOR and other enforcement agents to immediately and confidently authenticate cigarette stamps. Supporting more than 4,700 retail inspections and 360,000 pack (stamp) verifications annually, the tools interact with specialized forensic security on the stamp to allow authorized agents to confirm stamp authenticity and verify the data on stamping agents. Licensees also have access to validation tools to confirm the material security of stamps on products received within the legitimate supply chain. Both capabilities can be quickly extended for use with a stamp on ENDS products.

Along with this extension, SICPA has established customer support infrastructure, professional services, and training for rapid and effective rollout of the stamping program for ENDS products.

### **Medium Term—SICPATRACE® Data Enhancement (3 – 5 months to implement)**

**Objective:** Beyond the initial steps, additional elements of the SICPATRACE® solution can be leveraged to provide additional data reconciliation on ENDS product distribution and sale.

- 1) **Establish an ENDS Product Directory (EPD):** Require that all ENDS product manufacturers register their ENDS products intended for retail sale in the Commonwealth. The current SICPATRACE® TPD is fully extensible to meet the manufacturer/product

registration requirement of an EPD. This approach ensures consistent alignment with existing cigarette enforcement tools. The EPD would provide the Commonwealth with a centralized tool for inclusion, removal, expiration, and renewal of ENDS products based on their FDA PMTA status and Commonwealth regulations. This visibility will facilitate enforcement in the field, prevent stamping of unauthorized or unrecognized products, and facilitate public health by preventing the distribution of brands and products associated with an unauthorized manufacturer or product.

- 2) **Stamp Activation of ENDS Products:** Link each secure and serialized stamp to the individual ENDS product retail unit. Stamp activation in SICPATRACE® creates a digital record that associates each stamp to a specific product manufacturer and brand confirmation (validated against the EPD at time of stamping) and information on the specific location and operator placing the stamp on the product. Activation information is housed in the SICPATRACE® solution and is utilized by the stamp inspection tools to provide enforcement the means to query observed stamps on ENDS products to verify authenticity and confirm products conform to regulations pertaining to sale.
- 3) **Capture of ENDS Retailer:** Ensure that retailers are only receiving products they are authorized to sell. SICPA is currently working with the DOR to extend the SICPATRACE® solution to enable capture of the retailer “ship to” information for the cigarette tax stamping program. This would allow each stamped cigarette pack to be linked to a specific retail location/licensee of sale. While the Act applies a broad set of restrictions on the sale of ENDS products and flavored tobacco products, it does provide for certain flavor and potency exemptions for retail establishments designated as smoking bars. The capture of the ENDS retailer using the SICPATRACE® retailer “ship to” function can provide additional validation that wholesalers are not only distributing products authorized within the guidelines of the AVCM. This can also support verification they are selling flavored or higher nicotine content products only to authorized retail licensees.
- 4) **Reporting:** Enable reporting and reconciliation of stamp ordering and activation directly linked to specific ENDS products in the SICPATRACE® solution. Similar to current MSA reporting, SICPATRACE® reporting on ENDS product stamping activities will enable DOR and Task Force member agencies to quantify the compliance of manufacturers and determine volume sales (broken down per manufacturer, brand and brand family) of ENDS products. Through this visibility, the Commonwealth will be better prepared to enact future policies, take enforcement actions, seek future remediation by leveraging immediate access to this data and historical data recorded in the system.

#### **Long Term—Stamp Application Automation Enhancements (6-8 months to implement)**

**Objective:** Partner with the Commonwealth to facilitate the transition from hand application of stamps to automated options that can apply stamps at high speed to the variety of ENDS products authorized for sale.



- 1) **Collaboration with Stamping Machine Manufacturers:** SICPA has commercial relationships with stamping machine equipment manufacturers that can provide pricing and timeframes to industry for acquisition of machines (leasing or purchase). SICPA is already working on testing of a prototype ENDS stamping machine in collaboration with an equipment manufacturer and SICPA will work to assess current machine options and as necessary work with stamping agents and Commonwealth authorities to develop additional specifications for any required high-speed application equipment.
- 2) **Stamping Machine Rollout:** SICPA will extend automated activation of ENDS products by leveraging current SICPATRACE® automated activation toolsets (currently used for stamping of cigarettes on high-volume stamping machines) on machines specifically designed to support high-volume stamping of ENDS products.

### Challenges/Considerations

While SICPATRACE® can be extended to enhance control and visibility into legitimate distribution and sale of ENDS products, there are issues that the Tas Force may wish to consider and address:

- 1) **Variety of ENDS Products Packing:** The lack of a uniform form factor with ENDS product packages makes them unsuitable for use with current automated stamping machines that apply stamps at high speeds on cartons of cigarettes. Cigarette packing is generally uniform (cartons) which allows most cigarette products to be stamped using high-speed, automated stamp application machines (90 – 120 cartons per minute). For non-uniform cigarette products (e.g., 25s, wide packs, slims, other specialty cigarette packs, etc.) SICPATRACE® provides registration features that enable stamping agents to annually apply by hand approximately 40 million stamps. Manual stamping can be quickly utilized for ENDS as a mechanism to apply stamps and offers wholesalers an alternative to investing in automated stamping equipment.
- 2) **Compensation for Stamping ENDS Products:** The Commonwealth may also want to consider extending some form of credit to licensees required to apply stamps to compensate for the additional resources, machinery and labor required to facilitate this activity. A stamping discount is already offered with cigarettes and provides a potential model for ENDS products.
- 3) **Leveraging of ENDS Serialization:** SICPA is aware that certain ENDS manufacturers are moving forward with serialization initiatives to assist their supply chain partners in preventing under-age sales. This serialization includes direct 2-D barcodes and alpha-numeric marks on retail units and aggregation barcodes on wholesale units. Furthermore, the use of Bluetooth technology embedded in ENDS devices is being investigated by ENDS manufacturers as a mechanism to prevent underage consumption and has been announced by at least one major manufacturer as being part of their PMTA submission. These efforts could be leveraged by a stamping program to facilitate additional options for registering and stamping products at the wholesale unit level while still providing access to product, activation, ship to

and tax confirmation data on retail units using the existing DOR SICPATRACE® solution and verification toolsets.

- 4) Uniformity of Product Packaging:** The inconsistent form factors of ENDS product packaging not only challenges automated application of stamps, it also challenges potential stamp placement. Stamps will need to be placed in a manner that does not obscure any federal- and/or Commonwealth-mandated labeling requirements (e.g., health warnings and Surgeon General warnings), any required printed warnings and disclosures, and/or manufacturer branding. SICPA suggests the Commonwealth mandate that any ENDS product must come packaged in a retail unit container that contains a reasonable quiet area or blank space for a stamp to be placed. The location will be in such a way that it is visible to the consumer and would not obscure any required federal or Commonwealth health warnings. There is a model for this as the CRA requires that all cannabis product packages used in Canada must facilitate the use of the cannabis excise stamp.

While the consideration to stamp ENDS products has its challenges, SICPATRACE® provides an existing asset that will support the Commonwealth in quickly establishing control and assisting consumers in identification of legitimately sourced ENDS products. SICPA is a trusted partner of the Commonwealth and is able to offer its assistance to the Commonwealth and the Task Force as it continues to evaluate how to ensure that the market is in full compliance with the Act.

Sincerely,

Alexandre Finkel  
Chief Operating Officer  
[Alex.Finkel@sicpa.com](mailto:Alex.Finkel@sicpa.com)  
**SICPA**