

Illegal Tobacco Task Force

Notice of Public Meeting

Meeting Date: Tuesday, February 28th, 2017

Meeting Time: 10:30 AM

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

Members will continue a discussion regarding proposed legislative changes to the state's laws relating to tobacco, which will include a presentation regarding NJ's statutory treatment of seized contraband tobacco. In addition, members will hear a presentation regarding DORs tobacco enforcement activities. Finally, members will discuss the Task Force's Annual Report and vote on whether to approve it.

- A. Opening Remarks/Approval of Last Meeting Minutes
- B. Housekeeping Items
- C. Discussion/Vote on Annual Legislative Report
- D. Discussion/Vote on Smokeless Tobacco Stamping
- E. Discussion of Proposed Legislative Changes/Amendments
- F. NJ Presentation
- G. DOR Presentation
- H. Upcoming Meetings
- I. Wrap Up/Closing Comments

Due to security at the Saltonstall Building, those interested in attending the meeting should allow for additional time to check-in.

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the American with Disabilities Act, please contact DOR Human Capital Development at 617-626-2355.

Date of Posting: February 24, 2017 @ 2:00pm

Illegal Tobacco Task Force Minutes

Meeting Date: January 12, 2017

Meeting Time: 10:30am

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

Board Members Present: Kajal Chattopadhyay (Co-Chair), Capt. Steve Fennessey (Co-Chair), Michael Sweeney, David Solet, Amber Villa, Christy Fedor, Patti Henley.

Others: David Cahill, Kevin Brown, Julie Flynn, Brenda McConville, Evan Garcia, Molly Parks, Peter French, Josh Brabazon, Paul D'Amore, Jenn Robertson, Casey Harvell, Scott Delaney, Molly Slingerland, Paul Caron.

Call to Order:

- Mr. Chattopadhyay called the meeting to order at 10:43am.
- Mr. Chattopadhyay also announced there would be no outside speakers today. He informed the Task Force that was a deliberate decision to allow for open conversation among the group.
- Before discussion of the meeting minutes, Mr. Chattopadhyay made a technical edit to the portion relating to malfunctioning stamping equipment.
- After the changes were made, Mr. Solet made a motion to approve the minutes. Mr. Sweeney seconded. The minutes were approved unanimously.

Housekeeping Items:

- Mr. Chattopadhyay checked in on the Financial ISAs and asked for a status on spending within agencies:
 - DPH: \$18,000 spent on RDMS (Retail Data Management System) so far.
 - AGO: Added two AAGs who will be working on Task Force related cases.
 - State Police: \$10,000 used for the purchase of new IT equipment to be used in investigations. Will use funds for "Buy Money" in undercover operations.
 - DOR: Will use some funding to hire an investigator for enforcement cases.

Task Force Discussion – Seized Product Auction:

- Mr. Chattopadhyay began a discussion on the proposal to permit the auction sale of seized contraband tobacco. Each agency weighed in with their positions.
- Ms. Henley of DPH indicated that her agency has major concerns with the auction sale proposal because, among other things, it would introduce cheap product into the local market and undermine existing minimum pricing laws. In addition, Ms. Henley questioned whether the state should be involved in selling tobacco products to the public.

- Ms. Villa of AGO expressed her agency's disapproval of the auction sale proposal due, in part, to the legal ramifications of auctioning seized product. Ms. Villa stated that questions involving liability for sales of seized product, regulatory and legal concerns regarding whether seized out-of-state stamped product could later be stamped in MA and Master Settlement Agreement restrictions would be difficult hurdles to overcome.
- Mr. Sweeney proposed an alternative idea under which tobacco manufacturers could buy back seized contraband from the Commonwealth. Such buy back is currently permitted by statute in New Jersey. Ms. Slingerland from Altria indicated that she helped to draft the New Jersey statute and would be willing to discuss it further.
- Ms. Henley raised a question regarding the ultimate purpose of the auction sale proposal and the issue it was intended to address. Mr. Chattopadhyay indicated that the Task Force's law enforcement members have had to incur substantial cost to store seized contraband product which, under current law, must be destroyed. The auction proposal is intended to reduce storage costs while allowing the Task Force to raise funds for enforcement purposes.
- Other Task Force members indicated that they supported the buy-back idea proposed by Mr. Sweeney and would be interested in discussing it further.
- Mr. Chattopadhyay asked the Task Force to continue thinking about Mr. Sweeney's idea. Ms. Villa asked if the Task Force could find any other states that permit buy-back of seized tobacco.

Task Force Discussion – Labeling Requirements:

- Members of the Task Force reviewed a DPH memo regarding labeling requirements on OTP, giving highlights of the research they conducted.
- Task Force members from DPH went over their findings and the feasibility of where stamps can be applied on tins of smokeless tobacco, with the biggest concern being de-sleeving and re-sleeving product.
- Ms. Villa indicated that she agreed that smokeless tobacco tins could be re-sleeved in clear plastic and not be in violation of law.
- Mr. Chattopadhyay asked the Task Force for their sense on what the next steps should be with respect to stamping smokeless tobacco tins.
- Mr. Solet added that a need for more enforcement would be needed to assist with smokeless tobacco product stamping. He asked it be added to the agenda for the next meeting. Mr. Chattopadhyay agreed and stated the Task Force will vote on whether to continue discussions about smokeless tobacco stamping at its next meeting.

Other Business:

- Mr. Chattopadhyay informed the Task Force that its annual report to the Legislature is due March. 1. He says the report will provide a general overview of the Task Force's work, including recent investigations. He plans to have a draft ready to review and vote on at the next meeting.
- The next meeting is set for Feb. 28th at 10:30am.

Meeting was adjourned at 12:03pm by Mr. Chattopadhyay.



N.J.O.C.I.

NJ Department of the Treasury

Statute citations re: disposition of seized contraband cigarettes and tobacco.

Special Agent in Charge Charles Giblin
Charles.giblin@treas.nj.gov

2C:64-1. Property Subject to Forfeiture.

a. Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

(1) Controlled dangerous substances, firearms which are unlawfully possessed, carried, acquired or used, illegally possessed gambling devices, **untaxed or otherwise contraband cigarettes or tobacco products**, untaxed special fuel, unlawful sound recordings and audiovisual works **and items bearing a counterfeit mark. These shall be designated prima facie contraband.**

(2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.

(3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.

(4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

b. Any article subject to forfeiture under this chapter may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when

(1) The article is prima facie contraband; or

(2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.

c. For the purposes of this section:

"Items bearing a counterfeit mark" means items bearing a counterfeit mark as defined in N.J.S.2C:21-32.

"Unlawful sound recordings and audiovisual works" means sound recordings and audiovisual works as those terms are defined in N.J.S.2C:21-21 which were produced in violation of N.J.S.2C:21-21.

"Untaxed special fuel" means diesel fuel, No. 2 fuel oil and kerosene on which the motor fuel tax imposed pursuant to R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or transferred in this State in a manner not authorized pursuant to R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).

amended 1979, c.344, s.1; 1981, c.290, s.46; 1992, c.23, s.70; 2004, c.150, s.3; 2011, c.80, s.4.

§ 2C:21-32 - Short Title; Definitions Relative To Counterfeit Marks; Offenses.

1. a. This act shall be known and may be cited as the "New Jersey Trademark Counterfeiting Act."

b. As used in this act:

(1) "Counterfeit mark" means a spurious mark that is identical with or substantially indistinguishable from a genuine mark that is registered on the principal register in the United States Patent and Trademark Office or registered in the New Jersey Secretary of State's office or a spurious mark that is identical with or substantially indistinguishable from the words, names, symbols, emblems, signs, insignias or any combination thereof, of the United States Olympic Committee or the International Olympic Committee; and that is used or is intended to be used on, or in conjunction with, goods or services for which the genuine mark is registered and in use.

(2) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

c. A person commits the offense of counterfeiting who, with the intent to deceive or defraud some other person, knowingly manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute within, or in conjunction with commercial activities within New Jersey, any item, or services, bearing, or identified by, a counterfeit mark.

A person who has in his possession or under his control more than 25 items bearing a counterfeit mark shall be presumed to have violated this section.

d. (1) An offense set forth in this act shall be punishable as a crime of the fourth degree if:

the offense involves fewer than 100 items bearing a counterfeit mark;

the offense involves a total retail value of less than \$1,000.00 for all items bearing, or services identified by, a counterfeit mark; or

the offense involves a first conviction under this act.

(2) An offense set forth in this act shall be punishable as a crime of the third degree if:

the offense involves 100 or more but fewer than 1,000 items bearing a counterfeit mark;

the offense involves a total retail value of \$1,000.00 or more but less than \$15,000.00 of all items bearing, or services identified by, a counterfeit mark; or

the offense involves a second conviction under this act.

(3) An offense set forth in this act shall be punishable as a crime of the second degree if:

the offense involves 1,000 or more items bearing a counterfeit mark;

the offense involves a total retail value of \$15,000.00 or more of all items bearing, or services identified by a counterfeit mark; or

the offense involves a third or subsequent conviction under this act.

In addition, any person convicted under this act, notwithstanding the provisions of N.J.S.2C:43-3, shall be fined by the court an amount up to threefold the retail value of the items or services involved, providing that the fine imposed shall not exceed the following amounts: for a crime of the fourth degree, \$100,000.00; for a crime of the third degree, \$250,000.00; and for a crime of the second degree, \$500,000.00.

e. All items bearing a counterfeit mark, and all personal property, including but not limited to, any items, objects, tools, machines, equipment, instrumentalities or vehicles of any kind, employed or used in connection with a violation of this act, shall be subject to forfeiture in accordance with the procedures set forth in chapter 64 of Title 2C of the New Jersey Statutes.

f. For purposes of this act:

(1) the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses;

(2) any State or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

g. Conviction for an offense under this act does not preclude the defendant's liability for the civil remedy available pursuant to section 2 of P.L.1987, c.454 (C.56:3-13.16).

L.1997,c.57,s.1; amended 1999, c.313.

§ 54:40A-30 - Unstamped Cigarettes Subject To Confiscation.

607. Unstamped cigarettes subject to confiscation.

- a. All cigarettes, subject to the tax imposed by this act, to which stamps have not been affixed, as required by this act, and all cigarettes stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15) found in any place in this State are declared to be prima facie contraband goods and may be seized by the director, the director's agents or employees, or by any peace officer of this State, when directed by the director so to do, without a warrant.
- b. The director may upon satisfactory proof direct the return of any unstamped confiscated cigarettes when the director shall have reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed by this act. Any purchaser of such cigarettes shall be required to affix stamps as required by this act.
- c. (1) Except as otherwise provided in this section, the **director shall destroy** any seized unstamped cigarettes or cigarettes that have been stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15). The **director may, prior to the destruction of such cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect the cigarettes, in order to assist the director in any investigation regarding such cigarettes.**
- (2) As an alternative to destruction, **the director may resell** such cigarettes to the manufacturer of those cigarettes, **but such cigarettes shall be resold only for export or destruction.**
- (3) **Notwithstanding the provisions of paragraph (1) of this subsection, the director may authorize the use for law enforcement purposes of cigarettes forfeited in accordance with this section.**
- d. The seizure and sale of any unstamped or illegally stamped cigarettes or any other contraband cigarettes under the provisions of this section shall not relieve any person from a fine, imprisonment or other penalty for violation of any of the provisions of this act. The director, the director's agents, employees, and any peace officer of this State, when directed so to do, shall not in any way be responsible in any court for the seizure or the confiscation of any unstamped or illegally stamped packages of cigarettes or any other contraband cigarettes.

L.1948, c.65, s.607; amended 1999, c.328, s.6; 2011, c.80, s.2.

Mass DOR Tobacco Unit Field Inspection Overview

Evan Garcia

Director of Miscellaneous Excise
Massachusetts Department of Revenue



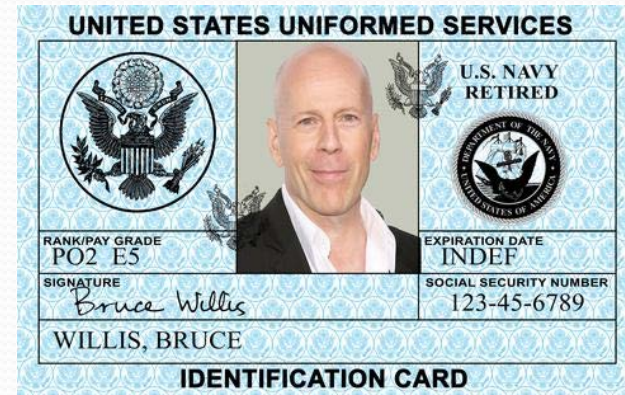
Tobacco Unit (Field)

- 3 Field Inspectors
- Inspections are conducted 4 days a week & the 5th day is spent in the office
- Estimated 7,500 retailers. Due to new system there are currently 6,553. If retailers are not compliant, license will not issue
- Inspectors utilize the SICPA Air 1 to scan stamps for authenticity and stamp information
- A visual examination of all cigarettes and OTP
- Verify that retailers are licensed properly for sales tax, cigarettes and cigars (2 separate licenses)



Field Inspection Overview

- Show retailer DOR issued ID
- Fill out retailer verification form (for our records)
- Conduct examination (details in next slide)
- Provide retailer with a packet that explains the inspection and has director's contact information



Tobacco Inspection Stops by FY

<u>As of 02/17/17</u>				
FY 2015:	<u>Totals:</u>	<u>1483</u>	Started reviews 01/2015	
FY 2016:	<u>Totals:</u>	<u>2772</u>		
FY 2017:	<u>Totals:</u>	<u>2360</u>	New Inspector joined 08/2016	
Stops do not include cigarette drives				

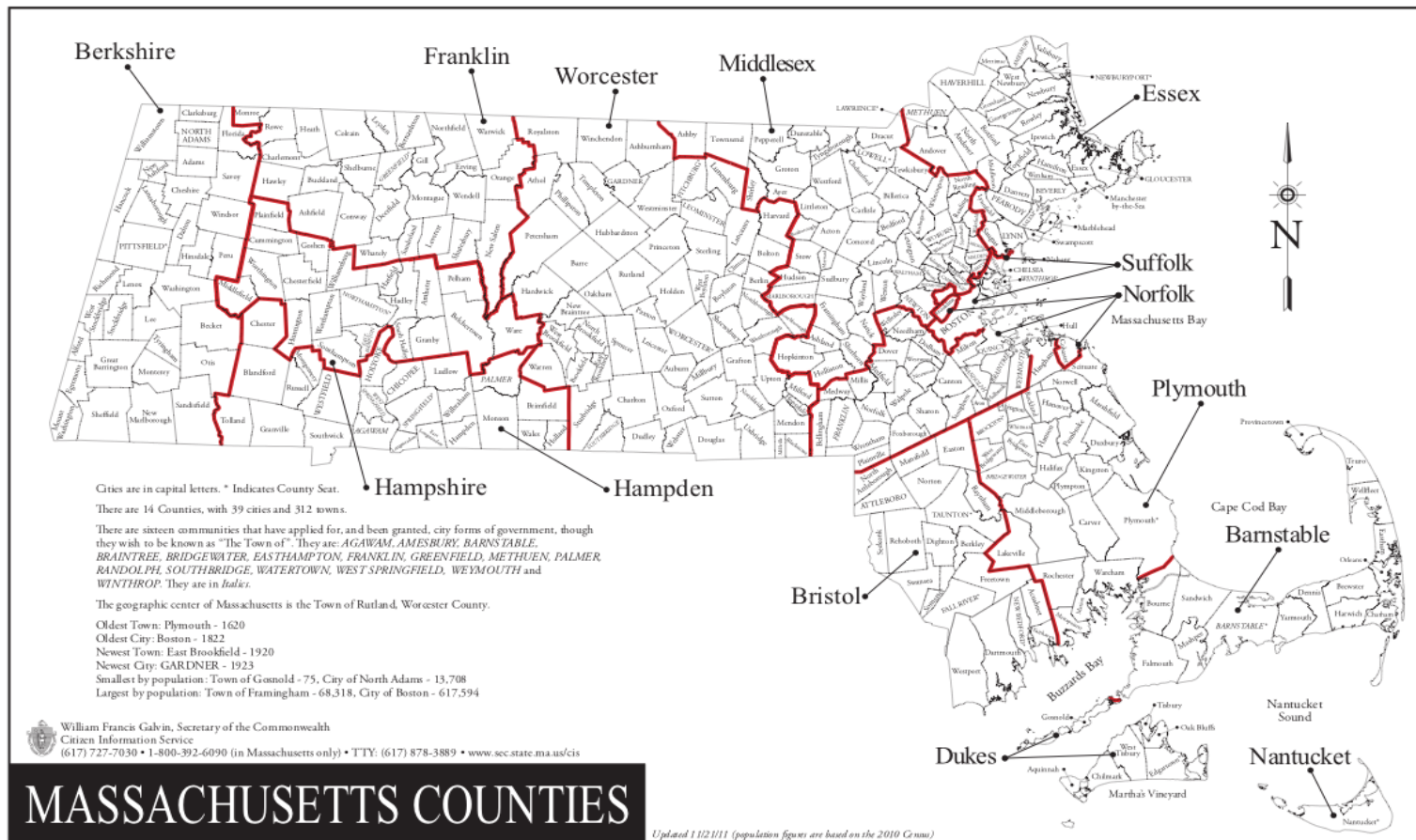
Quarterly Cigarette Review

- With the assistance of the Filing Enforcement Bureau about 20 examiners or more conduct reviews for 4 days 4 times a year
- There are usually at least 10 teams of 2 examiners and each has a scanner and performs the same review as a Tobacco Field Inspector
- More exposure throughout the state
- We visit areas with high seizure rates or safety concerns

Cigarette Drive Stops by FY

Fiscal Year 2017	Totals -	1069
Fiscal Year 2016	Totals -	2,401
Fiscal Year 2015	Totals -	2940
Fiscal Year 2014	Totals -	2,372
Fiscal Year 2013	Totals -	1852

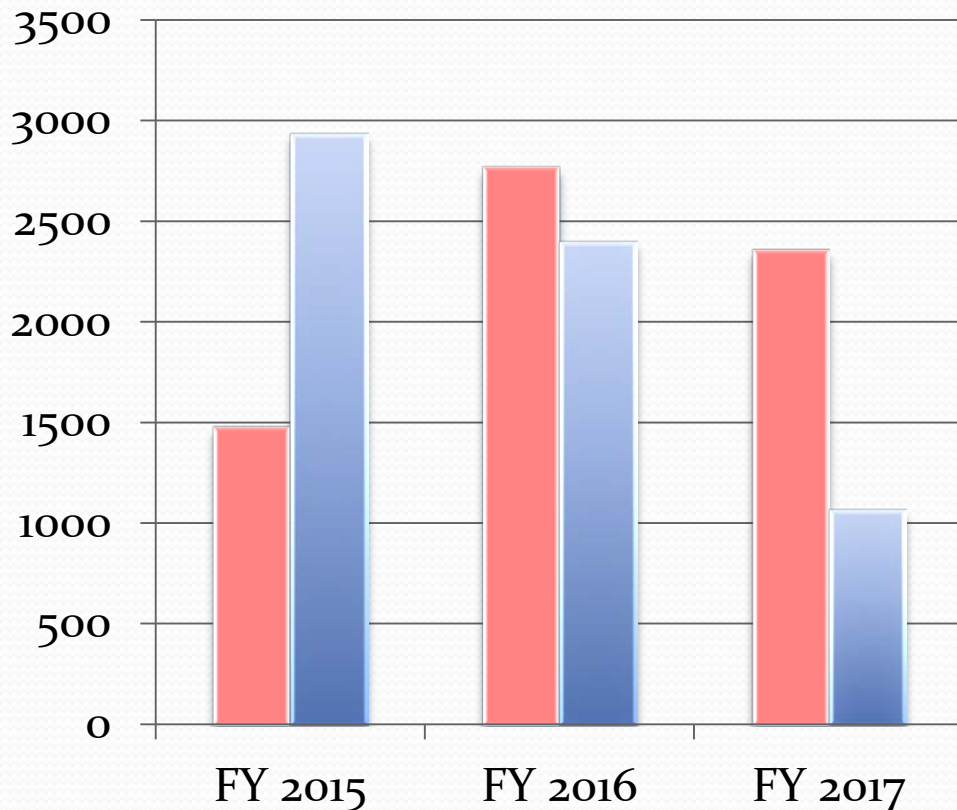
- In July 2015 we lost employees due to the early retirement incentive program
- Decrease from FY 15 to FY 16
- We don't revisit municipalities visited by the tobacco inspectors
- We focus on areas with high seizure rates, safety concerns and far away.



There are 351 municipalities and an estimated 7,500 retailers

Tobacco Inspector		
Fiscal Year 2015:	<u>Totals:</u>	<u>1483</u>
Fiscal Year 2016:	<u>Totals:</u>	<u>2772</u>
Fiscal Year 2017:	<u>Totals:</u>	<u>2360</u>

Cigarette Drive		
Fiscal Year 2015	Totals -	2940
Fiscal Year 2016	Totals -	2,401
Fiscal Year 2017	Totals -	1069



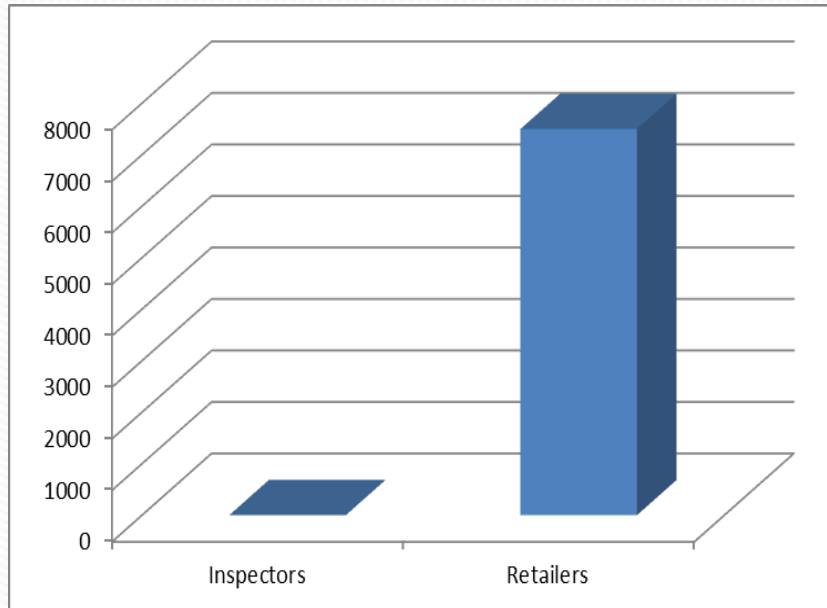
Totals of both projects:

FY 2015 4423

FY 2016 5173

FY 2017 3429

Inspectors to Retailers



- There are 351 municipalities
- Our goal is to visit every municipality once a year
- Additional inspectors would allow for more frequent inspections

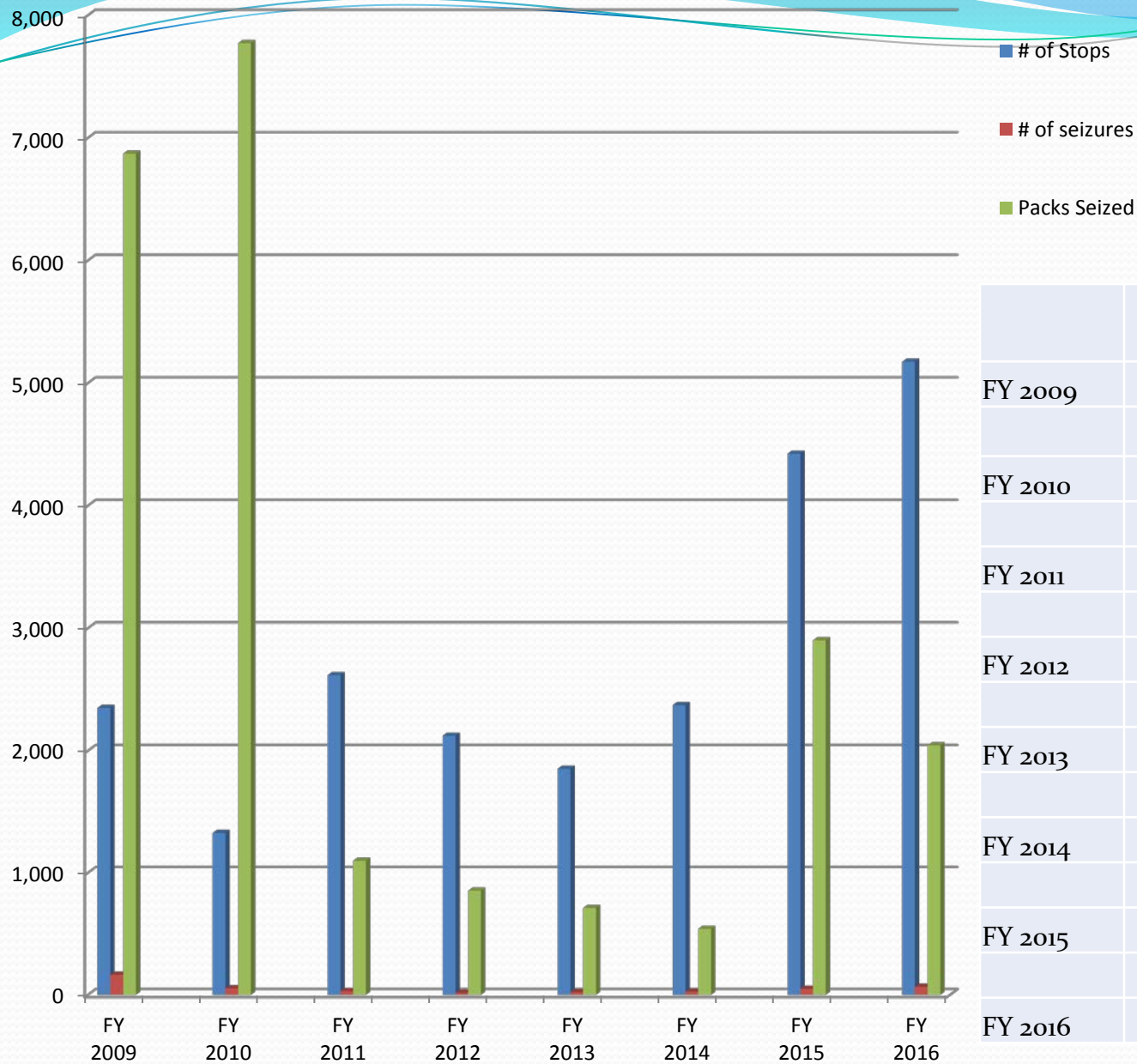
1st & 2nd inspector started 01/2015

3rd inspector started 08/2016

Cigarette Examination

- Scan stamps on cigarettes
- Take note of wholesaler information provided by the retailer
- Review minimum pricing
- If needed, assist with licensing and answer any questions the retailer may have
- Seize any cigarettes that are illegally stamped or have no stamp (retailer gets receipt)
 - Retailer will receive a warning, suspension and/or fine





	# of Stops	# of seizures	Packs Seized
FY 2009	2,349	164	6,870
FY 2010	1,326	52	7,772
FY 2011	2,616	31	1099
FY 2012	2122	15	853
FY 2013	1852	21	712
FY 2014	2,372	26	541
FY 2015	4423	50	2900
FY 2016	5,173	66	2043

Suspension and Revocation Guidelines for Unstamped Tobacco Product

Seizure Amount	First Violation	Second Violation	Third Violation
less than 50 packages	Warning	up to 90 day suspension	license may be revoked
50 packages - 300 packages	up to 30 day suspension	up to 120 day suspension	license may be revoked
301 packages - 600 packages	up to 60 day suspension	up to 180 day suspension	license may be revoked
over 600 packages	up to 90 days suspension or revocation	up to 1 year suspension or revocation	license may be revoked

OTP examination

- Review invoices
- Take notes of prices for chewing tobacco
- Note any discrepancies or issues
- Retailers with no invoices are given a fax # to submit information from distributors
- Unfortunately, even with invoices it's extremely difficult to verify that taxes were paid on OTP
- Hard to enforce illegal purchases because we can't verify



Concerns From Retailers

- OTP – retailers not paying the MA tax
 - Losing sales to retailers that purchase illegally
- Contraband sales
 - Retailers purchasing from NH, other states or “trunk slammers”
- Minimum Pricing
 - Enforcement is lacking





Q&A with field inspectors

