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FOR DISCUSSION PURPOSES ONLY – SUBJECT TO REVISION

Stamping of Other Tobacco Products

A. Background

Massachusetts currently requires encrypted tax stamps on cigarettes and little cigars, but no such stamp is required on smokeless tobacco, cigars and cigarillos, or pipe tobacco (Other Tobacco Products). Presentations to the Task Force varied on estimates of the illicit trade problem in Massachusetts; however, the low end of this estimate was 8.5% of the market.¹ For Massachusetts, this would mean \$1.27 million in lost tax revenue for smokeless products and \$1.16 million for cigars.²

Stamping of all tobacco products is recognized by the Centers for Disease Control, the National Research Council (NRC) and the Institute of Medicine as an important tool in combating illicit trade.³ According to these and other entities, the ability of enforcement agents to track and easily identify unstamped products will help increase compliance and tax collections.⁴ Several studies on the stamping of cigarettes have concluded that the benefits, including health outcomes and tax collection, outweigh the cost.⁵

There are several considerations in stamping of Other Tobacco Products. One is whether stamping of the product would bring that product out of compliance with FDA warning and labeling requirements and two is whether such a stamping scheme is technically feasible or can be made compliant.

B. FDA Required Warnings

FDA Warning Labeling Requirement: Since July 22, 2010, smokeless tobacco products manufactured and/or sold in the U.S. must contain one of four rotating warnings. These warnings must 1) Be on two major display panels (those most likely to be viewed by the consumer 2) Comprise 30% of the Display Panel and 3) in 17 point Font.⁶

This regulation applies to anyone who manufactures, packages, sells, offers to sell, distributes, or imports for sale or distribution smokeless tobacco products. This means that each product package must contain these labels and meet these requirements, and a person at every level of the supply chain could

¹ See: Task for Presentation by Vaughn Rees 1/13/16

² Estimate based on 2016 tax revenue estimate from the Department of Revenue/

³ Chriqui, Jamie PhD, Et. Al., Use of Tobacco Tax Stamps to Prevent and Reduce Illicit Tobacco Trade — United States, 2014 **May 29, 2015 / 64(20);541-546**. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6420a2.htm>; Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences (2015) available at: <https://www.nap.edu/read/19016/>

⁴ [Ibid](#) at pg 120-123

⁵ The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health. Atlanta (GA): Ch. 14 (2014).

⁶ Text may be in smaller font size if the text if the statement would occupy more than 70% of the warning area, but it must occupy at least 60 % of the warning area

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be held in violation. This is very similar to the warning label requirement for cigarettes, and will be required for cigars beginning in 2018.⁷

FDA Other Labeling Requirements: Smokeless tobacco packaging must also contain, and cigar packaging will have to contain: The name and place of business of the tobacco product manufacturer, packer, or distributor; an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and the statement: "Sale only allowed in the United States" on labels, packaging, and shipping containers of tobacco products. There is no font size or style requirement for these labels.⁸

Practically this means that the front of all smokeless packages must have a warning on the top, with an additional warning on the side. The additional requirements, including name and place of manufacturer, may be placed anywhere, but is generally located along the side as well. Generally, there is no information located on the bottom of the individual "pucks". Since it is required to be on all packaging, the outer wrap of the pucks must also contain this information. Stamps may not cover any of the required labels. See images below.



D. Technical Feasibility of Stamping Smokeless

Tax stamp machines and manual tax stampers with the ability to stamp Other Tobacco Products are currently on the market. Distributors could come into compliance with a tax stamp requirement on all products, though with increased manual labor to adhere stamps and/or repackage, if necessary.

⁷ U. S. Food and Drug Administration, FDA Deems Certain Tobacco Products Subject to FDA Authority, Sales and Distribution Restrictions, and Health Warning Requirements for Packages and Advertisements Guidance for Industry (2016). available at: <http://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulations/Guidance/UCM499354.pdf>

⁸ U.S. Food and Drug Administration, Smokeless Tobacco Labeling and Warning Statement Requirements (2016). Available at: <http://www.fda.gov/TobaccoProducts/Labeling/Labeling/ucm2023662.htm>; U.S. Food and Drug Administration, Cigar Labeling and Warning Statement Requirements (2016). Available at: <http://www.fda.gov/TobaccoProducts/Labeling/Labeling/ucm524442.htm>

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Distributors would have to place stamps outside of the warning or labeling area required by the FDA (such as on the bottom of each smokeless tobacco “puck”) and if these pucks were resealed or repackaged, a warning and additional labeling requirements would have to be present on the package.

Cigarette tax stamp machines have the ability to open a carton of cigarettes, stamp all packs and reseal the carton. SICPA Meyercord, the current vendor for the Massachusetts encrypted tax stamp program, presented in March 2016 on the current tax stamp program, and the technology being developed to stamp Other Tobacco Products. He stated that SICPA has been developing technology to stamp Other Tobacco Products since 2012, with industry engagement and test piloting, including a test pilot of the new equipment in Massachusetts, and that the major issue they are working to address is the challenge of desleeveing and resleeving the smokeless products.⁹

The European Union recently implemented a Tobacco Products Directive. This Directive sets standards that all member states must comply with, including tax stamping all cigarettes by 2019, and tax stamping of all tobacco products by 2024.¹⁰ Additionally, while not yet ratified, the World Health Organization has developed the Framework Convention on Tobacco Control’s (FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products, which would require all countries who signed on, currently at 24, to tax stamp all tobacco products manufactured or imported into their country within five years of ratification.¹¹

The Request for Response issued by the Massachusetts Department of Revenue for a cigarette stamp vendor in March of 2009 foresaw such a tax change, and deemed stamping of Other Tobacco Products in the scope of the contract with the engaged vendor. DOR stated that if the law was so amended they could “request proposals, including costs, from the Contractor regarding stamps or other tax indicia for these products and may amend the Contract to include these stamps or other indicia.”

Given the above, it seems clear that the industry is already working to develop OTP stamping technology, especially given the international demand, and further that they understand the challenges posed by existing regulatory schemes. Additionally, DOR or the contracting entity has the ability to proffer a detailed Request for Response to address the needs and challenges unique to the Commonwealth. However, even without this newer technology, distributors could still comply with FDA warning and labeling requirements.

⁹ <http://www.mass.gov/dor/docs/dor/taxprofessionals/illegal-tobacco-task-force/task-force-meeting-4-minutes.pdf>; <http://www.mass.gov/dor/docs/dor/taxprofessionals/illegal-tobacco-task-force/03-08-16-tobacco-taskforce-presentation.pdf>

¹⁰ http://europa.eu/rapid/press-release_IP-16-1762_en.htm

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