



April 25, 2023

Senator Joseph Baldacci
Representative Michele Meyer
Committee on Health and Human Services

Re: **Testimony Against LD 1215, *An Act to End the Sale of Flavored Tobacco Products*, sponsored by Senator Duson**

Senator Baldacci, Representative Meyer and members of the Health and Human Services Committee, I am Dan Riley, an attorney with the law firm of Norman, Hanson & DeTroy here in Maine, and I appear today in my capacity as General Counsel for the Northeast Wholesalers Association (NEWA), a regional trade association representing wholesale distributors of convenience products from Maine to Maryland.

NEWA is opposed to LD 1215 because our member distributors have experienced the market disruptions caused by the ban of flavored tobacco products enacted in Massachusetts in November of 2019.

I have attached the Annual Report of the Commonwealth of Massachusetts' Multi-Agency Illegal Tobacco Task Force, released on February 28, 2023. This report details the task force's findings and recommendations in the aftermath of the ban. That statewide ban pushed sales of flavored tobacco products, like menthol cigarettes, to the neighboring states of New Hampshire, Rhode Island and Vermont.

The ban also increased the seizure of contraband tobacco products sold through the black market. Please turn to page 8 of the report where I have highlighted two sentences which state;

“the Task Force identifies the cross-border smuggling of untaxed flavored ENDS products, cigars and menthol cigarettes as the primary challenge for tobacco enforcement in the Commonwealth.”

Please turn to page 16 of the report, ***V. Anticipated Barriers***, which states that this enormous increase in seizure of illegal tobacco products has caused the state to lease additional tobacco storage facilities to “allow for continued increased enforcement”.

Tobacco product seizures tripled from 2021 to 2022.

I have also attached an article from the *Boston Herald* dated March 6, 2023, which provides an overview of this report and quotes the report's findings that the ban has produced only a **0.5% reduction** in the rate of cigarette smoking among adults. At a cost of \$120 million in lost excise taxes, this is not a very strong return on investment.

The third exhibit I have given you is an article pointing out who is funding these flavor ban campaigns and why those campaigns are actually detrimental to public health.



Finally, the fourth exhibit attached to my testimony is a press release from the Center for Tobacco within the Food and Drug Administration stating that;

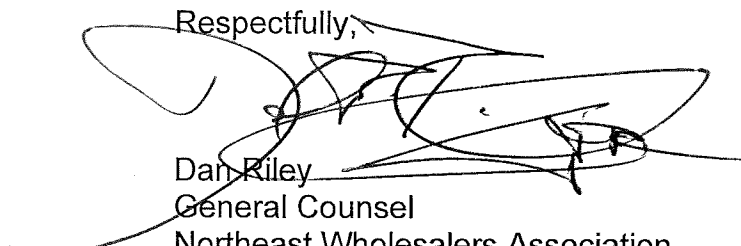
“To date the FDA made determinations on more than 99% of its determination of the nearly 26 million deemed products for which applications were submitted, including authorizing 23 new e-cigarette products and devices.”

These 23 e-cigarette or ENDS products received Marketing Granted Orders from the FDA which determined they achieved the standard of “appropriate for the protection of public health” **21 U.S.C. § 387j (c)(4)(A)-(B)**.

This is the third session in a row this committee has dealt with this legislation. I have updated this Committee on the FDA’s regulatory process at the hearings on the previous bills, LD 1190 during the 129th Legislature, and LD 1550 during the 130th. Now that the FDA is completing its determinations, and has authorized the sale and marketing of only 23 products out of 6.7 million applications they received, this legislation is both unnecessary and counterproductive to public health.

Thank you for your attention and I will be happy to answer any questions.

Respectfully,



Dan Riley
General Counsel
Northeast Wholesalers Association
P.O. Box 4600, Portland, ME 04102

Exhibits:

1. Commonwealth of Massachusetts’ Annual Report of Multi-Agency Illegal Tobacco Task Force
2. *Boston Herald* article from March 6, 2023 which cites the Massachusetts Illegal Tobacco Task Force Annual Report for 2023
3. *The American Consumer Institute Center for Citizen Research* article from February 21, 2022
4. *Center for Tobacco Products* news release from March 15, 2023

Commonwealth of Massachusetts

Annual Report of Multi-Agency Illegal Tobacco Task Force

February 28, 2023

An updated Report on the work of the Multi-Agency Illegal Tobacco Task Force to combat illegal tobacco distribution and the resulting loss of revenue to the Commonwealth of Massachusetts

Members of the Multi-Agency Illegal Tobacco Task Force

John H. Hayes, *Co-Chair*

Department of Revenue Designee

Lt. Colonel Brian Connors, *Co-Chair*

Massachusetts State Police Designee

Patricia Henley

Department of Public Health Designee

Nicole Nixon

Attorney General Designee

Nicholas Ogden

Attorney General Designee

Dan O'Neil

Office of the State Treasurer and Receiver General
Designee

Susan Terrey

Executive Office of Public Safety and Security Designee

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I. Task Force Creation and Legislative Background

As part of the Fiscal Year 2014 General Appropriations Act¹, the Massachusetts Legislature created the Commission on Illegal Tobacco (Commission) to study the magnitude and economic impact of the illegal tobacco market in the Commonwealth. On March 1, 2014, the Commission issued its “Report of Commission on Illegal Tobacco,” which provided a general overview of the illicit tobacco market in Massachusetts and contained a series of findings and recommendations.² One of the Commission’s primary recommendations was the creation of a Multi-Agency Illegal Tobacco Task Force. The Commission recognized that enforcement of the Commonwealth’s tobacco laws was spread across multiple agencies and envisioned the Multi-Agency Illegal Tobacco Task Force as the vehicle by which information and resources could be shared across agencies in order to maximize the effectiveness of enforcement efforts.³ The Commission also recommended a number of statutory changes and updates designed to improve compliance and the collection of tobacco excise taxes.

The Multi-Agency Illegal Tobacco Task Force (Task Force) was created pursuant to section 71 of the Fiscal Year 2016 (FY16) General Appropriations Act.⁴ According to its enabling statute, the Task Force is co-chaired by the Colonel of the State Police and the Commissioner of Revenue, or their designees, and additional members include the Secretary of Public Safety and Security, State Treasurer, Attorney General, and Commissioner of Public Health, or their respective designees. The Task Force is statutorily required to “coordinate efforts to combat contraband tobacco distribution, including efforts to foster compliance with the law and conduct targeted investigations and enforcement actions against violators.”⁵ Further, the Task Force must:

- (i) facilitate timely information sharing among state agencies to advise or refer matters of potential investigative interest;
- (ii) dedicate not less than an aggregate of 20 personnel from member agencies to carry out enforcement and investigative strategies;
- (iii) identify where illegal tobacco distribution is most prevalent and target task force members’ investigative and enforcement resources against those in violation of [chapter 64C] and chapter 62C, including through the formation of joint investigative and enforcement teams;
- (iv) assess existing investigative and enforcement methods in the Commonwealth and in other jurisdictions and develop and recommend strategies to improve those methods; and
- (v) solicit the cooperation and participation of other relevant enforcement agencies and establish procedures for referring cases to prosecuting authorities as

¹ St. 2013, c. 38, § 182.

² https://old.taxadmin.org/fta/tobacco/papers/MAcommissionreportonillegaltobacco_030114%20copy.pdf (accessed on February 2, 2023) (hereafter “Commission Report”).

³ Commission Report at pp. 5-6, 26-27.

⁴ St. 2015, c. 46, § 71; M.G.L. c. 64C § 40.

⁵ M.G.L. c. 64C § 40(a).

appropriate.⁶

The Task Force is required to meet at times and places determined by the Co-Chairs as “deemed necessary to carry out its mandate” and to submit a report by March 1 of each year “on the results of its findings, activities and recommendations from the preceding year....”⁷ Specifically, the report shall include: (i) a description of the Task Force’s efforts and activities during the year; (ii) identification of any administrative or legal barriers, including any barriers to multi-agency action or enforcement efforts; and (iii) proposed legislative or regulatory changes necessary to strengthen operations and enforcement efforts and reduce or eliminate any impediments to those efforts.⁸ The report is to be filed with the clerks of the Senate and House of Representatives, the Chairs of the Joint Committee on Revenue, the Chairs of the Senate and House Committees on Ways and Means, and the Chairs of the Joint Committee on Public Safety and Homeland Security. The Task Force is filing this Annual Report of the Multi-Agency Illegal Tobacco Task Force (Annual Report) in compliance with its March 1, 2023, reporting obligation.⁹

II. Results and Trends

During the past year, the Task Force has continued to address several challenges, including a significant expansion of the scope of its investigations due to prior changes in the tobacco control laws and several new designees to the Task Force. Irrespective of these challenges, the Task Force has continued to work with federal, state, and local partner agencies to successfully disrupt and intercept sophisticated tobacco smuggling operations.

A. Most Recent Legal Changes Concerning Tobacco Control

On November 27, 2019, Governor Charlie Baker signed “An Act Modernizing Tobacco Control” into law.¹⁰ The new law resulted in several changes to the law governing tobacco products in Massachusetts. Notable changes include a ban on the retail sale of flavored tobacco products, new regulatory requirements, and a 75% excise tax on the wholesale price of “electronic nicotine delivery systems” (“ENDS”), commonly referred to as “vape”.

Beginning on June 1, 2020, flavored tobacco products, such as menthol cigarettes and flavored cigars, smokeless tobacco, and ENDS products cannot be sold at retail. The sale of these products is now restricted to licensed smoking bars for onsite consumption. The new law sets forth licensure requirements and imposes an excise tax, among other things, concerning the sale of ENDS in Massachusetts, as defined in M.G.L. c. 64C, § 7E(a) broadly (including any component parts, accessories, batteries, etc.) and imposes a 75% excise tax on the wholesale price of all ENDS

⁶ M.G.L. c. 64C, § 40(b).

⁷ St. 2015, c. 46, § 71; M.G.L. c. 64C, § 40.

⁸ *Id.*

⁹ *Id.* For the Task Force’s prior reports, see <https://www.mass.gov/lists/dor-illegal-tobacco-task-force-past-cases-reports> (tab entitled “Past Reports”) (accessed on February 2, 2023). The FY21 Annual Report was filed on March 1, 2021 and the FY20 Annual Report was filed on February 28, 2020.

¹⁰ St. 2019, c. 133.

products.¹¹ The law also requires that ENDS distributors and retailers obtain a Department of Revenue (“DOR”) license.¹²

B. Trends for Tobacco Excise Tax Collection Data

The chart below (**Figure 1**) identifies the tobacco excise tax collected by DOR for FY16 through FY22.¹³ An analysis of the revenue data signifies a longer-term trend related to cigarette excise tax collections and newer trends related to smokeless tobacco, cigars, smoking tobacco, and ENDS.

Figure 1: MA Tobacco Excise Collections Broken Down by Product Category¹⁴

Collections by Type (in \$ Millions)	FY16	FY17	FY18	FY19	FY20	FY21	FY22
Cigarettes	610.0	582.7	554.6	515.4	486.0	370.6	363.9
Smokeless Tobacco	16.7	21.8	22.9	23.1	21.6	12.3	12.3
Cigar & Smoking Tobacco	13.7	15.0	16.5	18.2	16.3	15.2	14.5
ENDS	N/A	N/A	N/A	N/A	1.7 ¹⁵	13.3	16.3
Totals	640.4	619.5	594.0	556.7	525.6	411.4	407.0

Cigarette excise tax collections in FY22 decreased \$6.7 million from the prior year. In terms of an overall trend, the decline is not surprising as it corresponds with a national trend of declining cigarette sales,¹⁶ as well as a decrease in the number of smokers.¹⁷ The percentage of Massachusetts adults who currently smoke cigarettes declined from 14.7% in 2014, 13.4% in 2018, 11.1% in 2020, to 10.6% in 2021.¹⁸ While smokeless tobacco excise tax collections in FY22 remained unchanged

¹¹ M.G.L. c. 64C, § 7E(b).

¹² M.G.L. c. 64C, § 7E(h). DOR license required for those distributors and retailers located within Massachusetts.

¹³ It is important to note that all collections figures cited in this Annual Report exclude sales taxes collected on sales of tobacco products. The Department of Revenue does not separately track sales taxes collected on sales of tobacco products.

¹⁴ The FY22 Tobacco Excise Tax Collections on Cigarettes and ENDS can be found in Commonwealth of Massachusetts Department of Revenue Monthly Report of Collections and Refunds of June 2022. Breakdowns by category provided by DOR Miscellaneous Excise Bureau. See <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on January 10, 2023).

¹⁵ The “Act Modernizing Tobacco Control” imposing a 75% excise tax on the wholesale price of ENDS became effective on June 1, 2020, so there is only one month of data available for ENDS excise tax revenue during FY 2020. See The Commonwealth of Massachusetts Department of Revenue Monthly Report of Collections and Refunds of July 2020. <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on February 2, 2022).

¹⁶ See <https://www.ftc.gov/news-events/news/press-releases/2023/01> (documenting the decrease in nationwide cigarette sales during 2021) (accessed February 1, 2023). See also <https://www.itb.gov/tobacco/tobacco-statistics> (confirming a 10 year decline in cigarettes sales in the United States) (accessed January 23, 2023).

¹⁷ See https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (Centers for Disease Control and Prevention, *Cigarette Smoking Among Adults in the United States, 2020 - Current smoking among adults has declined from 20.9% in 2005 to 12.5% in 2020*) (accessed on January 23, 2023).

¹⁸ See <https://www.mass.gov/lists/brfss-statewide-reports-and-publications> (Massachusetts Behavioral Risk Factor Surveillance System (BRFSS) data for 2014, 2018, 2020, and 2021) (accessed on February 2, 2023).

from the prior year, the \$12.3 million collected during FY22 is well below the high of \$23.1 million collected in FY19. This overall trend in the decrease of smokeless tobacco revenue is also not surprising given the national decline in the amount of smokeless tobacco sold over the last several years.¹⁹

Revenue related to other tobacco products (“OTP”), which includes smokeless tobacco, cigars, and smoking tobacco, fell overall for the third consecutive fiscal year. Smokeless tobacco revenues remained unchanged while cigars and smoking tobacco revenues decreased by 4.6%.

The Task Force can report on a trend for ENDS excise tax revenue for the first-time as it has been more than two years since the imposition of the ENDS excise tax on June 1, 2020. ENDS revenue increased 22.5% during the past two years. In future reports, the Task Force will continue to monitor changes in the ENDS excise tax collections to identify any longer-term trends.

The Task Force can only speculate as to the reasons for the significant overall drop in tobacco excise tax revenue between FY20 and FY22 – approximately 22.6% over three years. The decline in tobacco excise revenue could be due to the decline in tobacco use identified in the Massachusetts Health Surveys for the past several years.²⁰ However, in addition to the gradual decrease in tobacco use in Massachusetts over the last several years, suspected smuggling of untaxed tobacco products into Massachusetts may also factor into the 22.5% decline in revenue.

Prior to the adoption of the “Act Modernizing Tobacco Control,” some analysts predicted that revenue collections could be impacted by the flavor-ban provisions of the law as customers may not choose to substitute non-flavored products for flavored tobacco products. For example, menthol cigarettes accounted for 37% of all cigarettes sold in the United States during 2021. Likewise, flavored smokeless tobacco (menthol, fruit flavored, alcohol flavored, or other flavored) accounted for approximately 53.5% of all smokeless tobacco products sold in the United States in 2021.²¹ The same preference for flavored ENDS could also impact revenue collections.²²

C. Trends for Tobacco Seizure Data

Prior to the Annual Report filed last year, the Task Force did not report on the quantity of tobacco products seized by the State Police or the DOR’s Criminal Investigations Bureau (“CIB”) and Miscellaneous Excise Bureau (“MEB”). This was due to two main reasons. First, there was no single repository to track tobacco seizures in the Commonwealth. Second, each Task Force agency used different metrics to quantify the seizures, making any compilation of the data unworkable.

Beginning in November 2021, the Task Force adopted universal metrics for all agencies to

¹⁹ See <https://www.fic.gov/news-events/news/press-releases/2023/01> (the amount of smokeless tobacco sold in the country has declined 7.2% since 2016) (accessed February 1, 2023).

²⁰ See <https://www.mass.gov/lists/brfss-statewide-reports-and-publications> (accessed on January 23, 2023).

²¹ See <https://www.fic.gov/news-events/news/press-releases/2023/01> (documenting the sale of flavored cigarettes and smokeless tobacco) (accessed February 1, 2023).

²² See <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey> (2022 National Youth Tobacco Survey (NYTS) results documenting that 85% of current vapers in middle and high schools preferred flavored e-cigarettes (ENDS) (accessed February 1, 2023).

track the seizure of tobacco products. The Task Force can now track the types and amounts of tobacco products seized during regulatory inspections or criminal investigations. While FY22 represents the first full year of tobacco seizure data, it can only support limited trend analysis as the prior year's data was incomplete for some tobacco types. However, the new tracking program will allow the Task Force to identify trends and better allocate resources in the future.

The charts below identify the quantities of untaxed tobacco products seized by the State Police (**Figure 2**), DOR (**Figure 3**), and all Task Force Agencies (**Figure 4**) during FY22.

Figure 2: State Police Tobacco Seizures

State Police Tobacco Seizures	FY21	FY22
Cigarettes (packs)	40	1,972
Smokeless Tobacco (tins/cans/bags)	330	15
Cigars	3,080	785
Smoking Tobacco (bags)	96	23
ENDS	105,802	6,406

Figure 3: DOR Tobacco Seizures

DOR Tobacco Seizures	FY21		FY22	
	CIB	MEB²³	CIB	MEB
Cigarettes (packs)	2,269	3,068	7,864	8,647
Smokeless Tobacco (tins/cans/bags)	4,166	625	20,514	29,005
Cigars	6,284	-	190,977	180,544
Smoking Tobacco (bags)	2	-	161	5,069
ENDS	973	-	33,509	31,831

Figure 4: Task Force (State Police & DOR) Seizures

Task Force Seizures	FY21	FY22
Cigarettes (packs)	5,377	18,483
Smokeless Tobacco (tins/cans/bags)	5,121	49,534
Cigars	9,364	372,306
Smoking Tobacco (bags)	98	5,253
ENDS	106,775	71,746

As reported in prior Annual Reports²⁴, the Task Force's enforcement actions had revealed a

²³ The MEB did not develop a detailed tracking system for seized tobacco products until FY22. MEB previously tracked the value of the seized tobacco for tax loss valuations and not the quantity of seized tobacco.

²⁴ See, e.g. FY19 Annual Report at pp. 5-6; FY20 Annual Report at pp. 5-7; and FY21 Annual Report at pp. 5-7.

disproportionate amount of smuggling activity involving OTP, especially smokeless tobacco, relative to OTP's share of the overall Massachusetts tobacco market. The Commonwealth's high tax rates on OTP relative to other states provide smugglers an incentive to import such products from low-tax states and sell them to in-state buyers willing to illegally evade payment of the applicable Massachusetts tobacco excise.²⁵ While the data set is still limited, during the past two years, the Task Force has seized less smokeless tobacco during inspections or criminal investigations compared to previous years.²⁶ The Task Force will continue to investigate the decline in smokeless tobacco seizures and report back with findings, but the decline in seizures aligns with the national decline in smokeless tobacco sales during the past several years.²⁷

Based upon the decrease in tobacco excise revenues, the increase in seizures of certain untaxed tobacco products, and discussions with the inspectors and investigators conducting the enforcement actions, the Task Force identifies the cross-border smuggling of untaxed flavored ENDS products, cigars, and menthol cigarettes as the primary challenge for tobacco enforcement in the Commonwealth. Inspectors and investigators are routinely encountering or seizing menthol cigarettes, originally purchased in surrounding states, and flavored ENDS products and cigars purchased from unlicensed distributors operating both within and outside the Commonwealth.

It should be noted that several neighboring states, including New Hampshire and Rhode Island, had reported a significant increase in tobacco revenue related to cigarettes and OTP in the year following the adoption of the "Act Modernizing Tobacco Control" in Massachusetts. However, during FY22, tobacco revenues decreased in both New Hampshire and Rhode Island.²⁸ The tobacco revenue decreases in the neighboring states could indicate the stabilization of the cross-border smuggling market due to the regulatory and criminal enforcement efforts of the Task Force this past fiscal year. The Task Force will continue to monitor the Commonwealth's tobacco excise revenues and seizures of untaxed tobacco products to identify any new trends.

III. Summary of Task Force Activities

The Task Force has continued to meet as needed to share information with member agencies, hear about recent developments in tobacco taxation and enforcement, and to discuss important policy issues.

²⁵ See <https://www.mass.gov/info-details/dor-cigarette-tobacco-and-vaping-excise-tax#> (related to the Massachusetts excise tax rate on smokeless tobacco products as 210% of wholesale price (highest in the nation) and the rate on cigars and smoking tobacco as 40% of wholesale price). See also <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-tobacco-enforcement#> (related to the trafficking pattern of smuggling tobacco products from states with low tax rates to states with higher tax rates (accessed on February 7, 2023)).

²⁶ It should be noted that the increase in the number of seized smokeless tobacco tins/cans/bags is due to the recent influx of a foreign brand of smokeless tobacco that is individually wrapped. While most smokeless tobacco tins/cans/bags contain 15 pouches, the foreign brand contains smaller pouches that are individually wrapped, which over-inflates the actual amount of smokeless tobacco seized.

²⁷ See <https://www.fic.gov/news-events/news/press-releases/2023/01> (the amount of smokeless tobacco sold in the country has declined 7.2% since 2016) (accessed February 1, 2023).

²⁸ See <https://www.revenue.nh.gov/transparency/tobacco.htm> and <https://dor.ri.gov/revenue-analysis/monthly-reports-fy22-fy11> (accessed January 23, 2023).

The Task Force has convened seven public meetings in the past year. Each of these meetings was held via videoconference in accordance with Sections 18-25 of Chapter 30A of the Massachusetts General Laws and the Governor’s Order suspending certain provisions of the Open Meeting Law, M.G.L. Ch. 30A §20. These meetings took place on the following dates:

April 27, 2022
June 9, 2022
August 9, 2022
September 28, 2022
January 25, 2023
February 7, 2023
February 22, 2023

The Task Force held a public hearing on June 9, 2022 to invite input from various members of the public, to include the tobacco industry, public health communities, and law enforcement agencies. The Task Force solicited public comment to determine what, if any, changes to the tobacco enforcement laws and/or regulations should be considered to recommend to the legislature. The Task Force specifically requested comments related to the below laws, but public comment was considered so long as it related to tobacco enforcement laws/regulations:

- *M.G.L. c. 62C § Section 16 (Timing of Tobacco Tax Payments)*
- *M.G.L. c. 62C § Section 68 (Suspension/Revocation of Tobacco Licenses)*
- *M.G.L. c. 62C § Section 73 (Obstruction of Tax Administration)*
- *M.G.L. c. 64C § Section 1 (Definitions)*
- *M.G.L. c. 64C § Section 5 (Tobacco Product Records Requirement)*
- *M.G.L. c. 64C § Section 7B (Cigar/Smoking Tobacco Inspections) & 7E (ENDS Inspections)*
- *M.G.L. c. 64C § Section 8 (Prosecution for Illegal Possession/Distribution)*
- *M.G.L. c. 64C § Section 10 (Penalties)*
- *M.G.L. c. 64C § Section 11 (Cigarette Records, Investigation, Examination & Search)*

The Task Force provided a summary of the potential changes to the above statutes during the public hearing and received written testimony from the American Heart Association and the Public Health Advocacy Institute. The Task Force incorporated the written testimony in the minutes for the June 9th meeting (public meeting #49) which was subsequently published to the Task Force website.²⁹

In last year’s report, the Task Force identified the process by which Task Force member agencies can safely and lawfully dispose of ENDS products at the conclusion of the civil or criminal investigations and prosecutions. The DOR recently contracted with a HAZMAT company to properly dispose of END products and has begun the licensing process with the Massachusetts Department of Environmental Protection (“DEP”) and US Environment Protection Agency (“EPA”).

Pursuant to the Massachusetts Open Meeting Law, detailed minutes of each Task Force meeting were taken, including all votes, presentations and discussions, and these minutes were published for the public according to the requirements of G.L. c. 30A, §§ 18-25.

²⁹ See <https://www.mass.gov/lists/dor-2022-illegal-tobacco-task-force-public-meetings> (accessed January 23, 2023)

In addition to its regular public meetings, the Task Force continued to successfully collaborate among Task Force agencies to conduct civil and criminal enforcement actions undertaken by the State Police, DOR, and Department of Public Health (“DPH”) – operating through the Local Boards of Health (“LBOH”).

A. Civil Investigations/Inspections

According to DOR records, there are currently 6,372 tobacco retailers and 111 tobacco distributors located in Massachusetts.³⁰ DOR’s MEB and CIB and LBOH (in collaboration with the DPH) have worked hard to help combat the sale of untaxed tobacco products and/or unlawful tobacco products associated with tobacco diversion. Significantly, DOR has increased the number of inspections by approximately 43% and the LBOH by 121% since FY20. The charts below (Figures 5 and 6) provide inspection data for FY20 through FY22 and the summaries provide examples of significant inspections during the past year:

Figure 5: DOR Tobacco Inspections

DOR Tobacco Inspections	FY20	FY21	FY22
MEB Inspections	2,975	3,405	4,236
MEB Seizures	7	157	298
MEB Actions (warning letters, suspensions, revocations)	1	56	577
CIB Inspections	3	13	28
CIB Seizures	3	13	28

- The CIB executed an administrative search warrant and conducted an inspection of an unlicensed tobacco distributor in Southeastern Massachusetts and seized a large quantity of untaxed ENDS products, OTP, and Newport Menthol cigarettes affixed with New Hampshire excise tax stamps. The CIB investigation revealed that the unlicensed distributor evaded approximately \$940,000 in excise taxes. The investigation has been referred to DOR’s Audit Division for assessment and the revocation of tobacco licenses.
- Based upon a MEB referral, CIB conducted a follow-up inspection of a licensed retailer in western Massachusetts and seized a significant quantity of untaxed ENDS products. During the investigation, CIB determined that the retailer purchased ENDS products from an out-of-state unlicensed distributor resulting in the evasion of approximately \$114,000 in unpaid taxes. The investigation has been referred to DOR’s Audit Division for assessment and the suspension of tobacco licenses.
- The MEB conducted an inspection of a licensed retailer in the Boston area and seized a large quantity of untaxed ENDS and smokeless tobacco products resulting in the evasion of approximately \$29,000. The matter has been referred for a tobacco license suspension.

³⁰ See [https://www.mass.gov/info-details/dor-cigarette-tobacco-and-vaping-excise-tax#licensed-tobacco-retailers-and-distributors-](https://www.mass.gov/info-details/dor-cigarette-tobacco-and-vaping-excise-tax#licensed-tobacco-retailers-and-distributors) (accessed on January 23, 2023).

- The MEB conducted an inspection of a licensed retailer in the Boston area and seized a large quantity of untaxed ENDS as well as cigars and smokeless tobacco products resulting in the evasion of approximately \$42,000. The matter has been referred for a tobacco license suspension.
- The MEB conducted an inspection of a licensed retailer in southeastern Massachusetts and seized 1,066 packs of menthol cigarettes affixed with New Hampshire tax stamps. CIB conducted a follow-up inspection which resulted in the seizure of an additional 68 packs of cigarettes affixed with New Hampshire tax stamps. CIB filed a criminal complaint against the owner of the retail location in district court which resulted in a Continued Without a Finding (CWO) disposition and restitution of \$5,000. The investigation has been referred to DOR's Audit Division for assessment and the suspension of tobacco licenses.

Figure 6: Local Boards of Health Tobacco Inspections (POST Data)

LBOH Tobacco Inspections	FY20	FY21	FY22
Inspections	2840	4935	6290
Violations Cited ³¹	650	2178	2080

- The LBOH conducted an inspection of a licensed retailer in southeastern Massachusetts and referred the matter to CIB following the discovery of a quantity of flavored ENDS products. CIB conducted a follow-up inspection and seized a large quantity of untaxed ENDS products and smaller quantity of untaxed cigars. The investigation determined that the retailer traveled to New Hampshire to purchase ENDS products for resale in Massachusetts. CIB concluded that the retailer evaded approximately \$90,000 in unpaid taxes. The investigation has been referred to DOR's Audit Division for assessment and the suspension of tobacco licenses.

During the past year, the DPH updated the Point-of-Sale Toolkit (POST) database that tracks enforcement and inspection visits of tobacco retailers throughout Massachusetts. POST enables DPH and LBOH to record violations of the 2019 tobacco law that restricts the sale of all flavored tobacco and high nicotine content ENDS products. The database allows LBOH to monitor all aspects of the new law, including the presence of signage, documentation of non-flavored product, and product placement.

The updates to POST allowed DPH to monitor the type of violations cited by LBOH during inspections. Most violations were cited for technical or administrative matters, but there were 267 violations issued for selling flavored tobacco products during FY22 – which is essentially unchanged from last fiscal year (268). DPH and LBOH worked to educate retailers, provide them with new signage, and help them understand the new documentation needed to comply with the law.

DPH Tobacco enforcement staff worked with the CIB to coordinate the sharing of intelligence regarding retail inspection and compliance results. A system was developed so LBOH can share

³¹ It should be noted there could be multiple violations issued during a single inspection.

information related to the discovery of potential untaxed flavored tobacco products.³² This collaborative effort has strengthened enforcement efforts.

B. Criminal Investigations

The State Police Detectives assigned to the Attorney General's Office and CIB continued their criminal investigation efforts in conjunction with other law enforcement partners. Below are some highlights from the past year:

- In May of 2022, the State Police and Boston Police executed a search warrant on a vehicle of a Boston man and seized 423 packs of menthol cigarettes affixed with New Hampshire tax stamps. The investigation was referred to the Suffolk County District Attorney's Office for prosecution.
- In June of 2022, the State Police conducted a motor vehicle stop of a Reading man and seized 274 ENDS products, marijuana, and US currency. The State Police filed charges with the Plymouth County District Attorney's Office.
- In June of 2022, as part of a joint CIB and State Police investigation, the State Police arrested a Swansea man on charges of Trafficking Unstamped Cigarettes following a traffic stop which resulted in the seizure of a significant quantity of cigarettes affixed with New Hampshire tax stamps and other untaxed tobacco products. Based on the historical CIB investigation, additional felony and misdemeanor charges related to Trafficking Unstamped Cigarettes and Tax Evasion were subsequently filed in Taunton and Fall River District Courts.
- In July of 2022, a Springfield man pled guilty to tax evasion charges related to the illegal importation of smokeless tobacco, smoking tobacco, and cigars from Connecticut to various retail locations in Massachusetts. The smuggling involved the evasion of over \$4.1 million in excise taxes. The case was prosecuted by the Attorney General's Office, with assistance from the State Police and CIB. The investigation has been referred to DOR's Audit Division for assessment.
- In July of 2022, the State Police executed a search warrant at a business in southeastern Massachusetts and seized a quantity of untaxed flavored ENDS as well as contraband cigarettes and smokeless tobacco. The investigation has been referred to DOR's Audit Division for assessment.
- In September of 2022, a New Hampshire man was indicted for Tax Evasion, Money Laundering, Conspiracy to Commit Tax Evasion, and violating the tobacco flavor ban. As part of the same case, a Newburyport man was also indicted for Conspiracy to Commit Tax Evasion and violating the tobacco flavor ban. The case is being prosecuted by the Attorney General's Office with assistance from the State Police and CIB.

³² The intelligence sharing program between DPH/LBOH and DOR was created because the 2019 Act Modernizing Tobacco Control is silent regarding LBOH's authority to seize any flavored tobacco products if located during an inspection. The LBOH has been advised to ask the retailer to box up the flavored tobacco products. However, the LBOH may report the discovery of flavored tobacco products to the DOR for possible follow-up and seizure of any untaxed tobacco products, which could then lead to civil or criminal penalties.

- In October of 2022, a Massachusetts resident and three Connecticut residents were sentenced to probation in federal court for their role in the operation of wholesale warehouses that sold untaxed tobacco products in Massachusetts and Connecticut. The case was prosecuted by the United States Attorney's Office for the District of Massachusetts with assistance from the ATF, Internal Revenue Service (IRS), Homeland Security Investigations (HSI), State Police, and CIB.
- In December of 2022, a Masphee man, the owner of two Cape Cod retail stores, was indicted on tax evasion charges related to the purchase of untaxed tobacco products from an unlicensed out-of-state distributor resulting in a tax loss of more than \$300,000. The case was prosecuted by the Cape & Islands District Attorney's Office with assistance from CIB.
- In December of 2022, a Shrewsbury man and Holden man were indicted in federal court and arrested for conspiracy to traffic in contraband smokeless tobacco. The individuals are alleged to have purchased large quantities of untaxed OTP in Pennsylvania and sold the products to retailers and distributors in Massachusetts which resulted in the evasion of more than \$2 million in tobacco excise taxes. The case was prosecuted by the United States Attorney's Office for the District of Massachusetts with assistance from the ATF, State Police, CIB, and the Shrewsbury and Holden Police Departments.
- In January of 2023, a Waltham man pleaded guilty to Tax Evasion in Middlesex Superior Court and was sentenced to one year HOC (six months to serve) and 5 years of probation. The individual purchased large quantities of untaxed OTP in Connecticut and sold the products in Massachusetts which resulted in the evasion of more than \$500,000 in tobacco excise taxes. The case was prosecuted by the Middlesex District Attorney's Office with assistance from CIB. The investigation has been referred to DOR's Audit Division for assessment.
- A variety of technical equipment previously purchased by the Task Force has been deployed in furtherance of investigations throughout the past year. Task Force personnel will continue to evaluate the need for additional technical equipment as well as keep up with the latest technologies to further Task Force investigations.

The Task Force has continued to streamline communication with the public and between its member agencies. The Task Force began utilizing social media to announce meeting dates and topics which has increased attendance.

As noted above, the Task Force has utilized a robust, multi-faceted enforcement model whereby the Task Force has suspended tobacco licenses of retailers selling illegal (untaxed) tobacco products; seized and confiscated illegal tobacco products; issued civil assessments for unpaid tobacco excise taxes and penalties; and prosecuted large-scale smugglers for violations of the Commonwealth's tobacco tax laws. Despite these notable successes, the illegal tobacco market continues to operate, depriving the Commonwealth of millions of dollars in tobacco excise tax revenue.

IV. Legislative Proposals

No substantive legislative changes have been made since the “Act Modernizing Tobacco Control” was approved in 2019 and became effective on June 1, 2020.

The FY21 Budget, approved on December 11, 2020, amended M.G.L. c. 64C, § 40 to expand the scope and budget of the Task Force to include ENDS within the Task Force’s enforcement efforts.³³ The budget increase funded the new enforcement obligations, among other expenditures.³⁴ The FY23 Budget, approved on July 28, 2022, maintained the same funding level for the Task Force.

Pursuant to its statutory mandate, the Task Force is charged with making recommendations to the legislature, “to strengthen operations and enforcement efforts and reduce or eliminate any impediments to those efforts.”³⁵ The Task Force has discussed several potential statutory and regulatory changes that could improve enforcement efforts by enhancing certain civil and criminal provisions and updating regulatory and administrative procedures. Below is a summary of the recommended changes to existing tobacco enforcement laws and regulations.³⁶

M.G.L. c. 62C § 16 (Filing of Returns):

- Change timing of payment of excise tax for unlicensed wholesalers/distributors (i.e., retailers purchasing from unlicensed distributors) of smokeless tobacco, cigars/smoking tobacco, and ENDS so that returns are filed upon purchase or importation of untaxed products. This would correct existing inconsistency between timing of filing returns for different tobacco license types.

M.G.L. c. 62C § 68 (Suspension/Revocation of Licenses):

- Add language that conviction for violation of chapter 64C or federal tobacco trafficking statutes could serve as basis for suspension/revocation of tobacco license.
- Add language that a licensee’s refusal to allow DOR access to conduct inspection is grounds for suspension/revocation of license.
- Amend appeals language so licensee is required to notify DOR commissioner of appeal and file bond before appeal hearing can take place – consistent with current DOR Administrative Policies and M.G.L. c. 58A § 9.

M.G.L. c. 62C § 73 (Tax Evasion):

- Amend tax evasion criminal sentencing provision to change “imprisonment for not more than five years” to “imprisonment in the house of correction for not more than 2 ½ years or state prison for not more than 5 years...” None of the tobacco-related criminal statutes include this jail/prison distinction, which is common in other criminal statutes.
- Authorize DOR/CIB investigators to file criminal complaints pursuant to Chapter 218 § 35A.

³³ St. 2020, c. 227 §§ 33, 34.

³⁴ St. 2020, c. 227 § 2, line item 1201-0400.

³⁵ M.G.L. c. 64C § 40(d)(iii)

³⁶ DOR has completed a draft document containing the detailed changes summarized in this report.

M.G.L. c. 64C § 1 (Definitions):

- Modify definitions to update language and resolve conflicts/confusion. For example, “tobacco products” does not include cigars and smoking tobacco under current definition.

M.G.L. c. 64C § 5 (Record Keeping):

- Modify language to require cigarette licensees to maintain records on-site for cigarette and smokeless tobacco.
- Add civil penalty for hindering, obstructing, or preventing authorized DOR inspection.

M.G.L. c. 64C § 7B (Cigars):

- Add on-demand inspection authority for cigar and smoking tobacco products.
- Add records as an item to be seized in addition to untaxed cigars/smoking tobacco.

M.G.L. c. 64C § 7E (ENDS):

- Add on-demand inspection authority for ENDS products.
- Add records as an item to be seized in addition to untaxed ENDS products.

M.G.L. c. 64C § 8 (Prosecution for Illegal Possession):

- Modernize language (apply to all tobacco products) and remove outdated sections.
- Add reference to new Section 10 criminal provision (see below).

M.G.L. c. 64C § 10 (Tobacco Trafficking & Penalties):

- Create new criminal provision for Dealing in Tobacco Products without a License. This would create a criminal provision that applies to the trafficking and associated tax evasion for all tobacco products, with the amount of tobacco sold or possessed with intent to sell serving as the basis for a misdemeanor or felony charge. This provision would apply to individuals as well as licensees who are acting outside the scope of their license (e.g., a retailer acting as an unlicensed distributor).
- Require payment by licensee to purchase tobacco products be in the form of a check, EFT, or credit/debit card (cash payment prohibited) and impose civil and criminal penalties for violations. This will create transparency and allow more efficient and effective civil and criminal enforcement of the tobacco laws.
- Add civil penalty for violation of new criminal provision of Dealing in Tobacco Products without a License.
- Add authority for DOR/CIB investigators to file criminal complaints pursuant to Chapter 218 § 35A.

M.G.L. c. 64C § 11 (Records/Reporting):

- Clarify DOR authority to examine cigarettes and smokeless tobacco products in addition to records.

M.G.L. c. 64C § 34 (Possession Unstamped Cigarettes):

- Add house of correction and prison sentence language (see M.G.L. c. 62C § 73 above).

M.G.L. c. 64C § 35 (Possession/Transportation of Unstamped Cigarettes):

- Add house of correction and prison sentence language (see M.G.L. c. 62C § 73 above).

M.G.L. c. 64C § 38 (Seizure/Forfeiture of Unstamped Cigarettes & Smokeless Tobacco):

- Add records as an item to be seized in addition to untaxed cigarettes & smokeless tobacco.

The Task Force finds that the above legislative recommendations would greatly enhance the Task Force's capabilities to disrupt illegal tobacco trafficking and reduce, as well as recover, lost revenue.

V. Anticipated Barriers

Aside from the challenges associated with the above legislative recommendations, the Task Force's increased investigative and enforcement activities during the past year have led to the seizure of large quantities of illegal tobacco products, resulting in a strain on the Task Force's storage capacity. While the State Police tobacco storage facility is operational, DOR's storage capacity has not kept pace with the increase in seizures. However, DOR is currently in the process of leasing additional tobacco storage facilities in western and eastern Massachusetts that will significantly increase storage capacity and allow for continued increased enforcement.

VI. Conclusion and Next Steps

Over the past year, the Task Force has successfully built upon the foundation it established with federal, state, and local law enforcement partners since its creation in 2015. While there are still challenges concerning the storage of seized product, the disposal of ENDS, and much needed changes to the existing laws, the Task Force remains committed to effectively combatting the problems associated with tobacco smuggling. During the coming year, the Task Force plans to improve communication and information sharing to better allocate investigative resources to combat contraband tobacco sales.