Commonwealth of Massachusetts

Annual Report of Multi-Agency Illegal Tobacco Task Force

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Report and update 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

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I. Task Force Creation and Legislative Background

As part of the Fiscal Year 2014 General Appropriations Act[1], 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] Pertinently, 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] In addition to the formation of the Multi-Agency Illegal Tobacco Task Force, the Commission recommended a number of statutory changes and updates as well as process improvements designed to increase compliance as well as tobacco excise and sales tax collections.

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 additionally consists of the Secretary of Public Safety and Security, State Treasurer, Attorney General, and Commissioner of Public Health, or their respective designees. The Task Force has been designated with the following responsibilities:

> The task force shall coordinate efforts to combat contraband tobacco distribution, including efforts to foster compliance with the law and conduct targeted investigations and enforcement actions against violators….
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> The task force shall: (i) facilitate timely information sharing among state agencies in order 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

[1] St. 2013, c. 38, § 182.

[2] https://old.taxadmin.org/fta/tobacco/papers/MAcommissionreportonillegaltobacco_030114%20copy.pdf (accessed on February 14, 2020) (hereafter "Commission Report").

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

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

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 appropriate.

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…."[5] 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.[6] 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, 2020, reporting obligation.[7]

II. Results and Trends

Over the course of FY20, the Task Force has dealt with the significant expansion of the scope of its investigations and some challenges as a result of restructuring its criminal investigative teams in FY19. As a result of the restructuring, the Task Force has continued to rely on its partnerships with federal officials and law enforcement agencies from neighboring states to successfully disrupt and intercept sophisticated multi-state smuggling operations. While these efforts have shown tangible results in the form of increased tobacco excise tax collections in the segment of the market on which the Task Force has focused its efforts (so called "other tobacco products" or "OTP"), [8] they have also exposed limitations in the Commonwealth's regulatory regime as it relates to OTP and electronic nicotine delivery systems commonly known as "vape" or "vapor products," as well as the need for a dedicated storage facility to allow for increased investigations and seizures.

[5] St. 2015, c. 46, § 71; M.G.L. c. 64C, § 40.

[6] *Id.*

[7] *Id*. For the Task Force's prior reports, *see* https://www.mass.gov/info-details/dor-illegal-tobacco-task-force (tab entitled "Reports") (accessed on February 14, 2020). The FY19 Annual Report was filed on March 1, 2019, and the FY18 Annual Report was filed on March 1, 2018.

[8] Other tobacco products (OTP) include cigars, smoking tobacco (commonly used in pipes), and smokeless (chewing) tobacco (commonly sold in hockey puck-shaped tins).

A. Excise Tax Data and Trends

As reported in the last several of its Annual Reports[9], the Task Force's enforcement actions have revealed a disproportionate amount of smuggling activity involving OTP 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 a strong incentive to import such products from other low-tax states and sell them to in-state buyers willing to illegally evade payment of the applicable Massachusetts tobacco excise.[10] Figure 1 below demonstrates the amount of tobacco excise taxes collected by the Commonwealth on cigarettes and OTP over the past several fiscal years.[11] Measured as a share of overall revenue collections, OTP represented approximately 4.95% - 4.98% of total tobacco excise collections from FY14 through FY16. Significantly, however, that percentage has risen in the past three years, to 6.32% in FY17, to 7.1% in FY18 and 8.03% in FY19.

Figure 1: MA Tobacco Excise Collections on Cigarettes and OTP

Collections by Type (in Millions of Dollars)	FY14	FY15	FY16	FY17	FY18	FY19
Cigarette	628.9	617.5	610.0	582.7	554.6	515.4
All Other Tobacco Products (OTP)	31.1	29.6	30.4	36.8	39.4	41.4
Total	**660.0**	**647.1**	**640.4**	**619.5**	**594.0**	**556.8**

Meanwhile, Figure 2 below breaks down the amount of tobacco excise collected on OTP based on product type over the same period.

Figure 2: MA Tobacco OTP Excise Collections Broken Down By Product Category

Collections by Type (in Millions of Dollars)	FY14	FY15	FY16	FY17	FY18	FY19
Cigar & Smoking Tobacco	14.1	14.1	13.7	15.0	16.5	18.2
Smokeless Tobacco Products	17.0	15.5	16.7	21.8	22.9	23.1
Total	**31.1**	**29.6**	**30.4**	**36.8**	**39.4**	**41.3**

Beginning with the revenue figures from FY17 and continuing throughout FY18 and FY19, some trends emerge from excise tax data. First, the amount of tobacco excise collected in FY19 from the sale of cigarettes experienced a significant ($39.2 million) decrease, representing a 7.07% decline from the previous year. FY18 cigarette excise collection figures similarly

[9] See, e.g. FY18 Annual Report at pp. 5-6; FY19 Annual Report at pp. 5-6.

[10] The Massachusetts tobacco excise rate on smokeless tobacco products is 210% of wholesale price (highest in the nation) and the rate on cigars and smoking tobacco is 40% of wholesale price. *See* https://www.tobaccofreekids.org/us-resources/fact-sheet/state-excise-tax-rates-for-non-cigarette-tobacco-products (accessed on February 14, 2020) (updated as of January 14, 2020).

[11] 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.

showed a decrease of $28.1 million (or 4.8%) decrease from FY17.[12] These collection figures are not surprising as they correspond with a broader national trend of declining cigarette sales[13] and decreasing numbers of smokers.[14] In fact, the percentage of Massachusetts adults who currently smoke cigarettes declined from 14.7% in 2014 to 13.4% in 2018.[15]

While excise collections from cigarette sales softened in FY18 and FY19, excise collected from sales of OTP in FY17 through FY19 experienced a notable increase. In FY19, OTP excise collections increased by $2 million (or 5%) compared to FY18. As noted in prior reports, in FY18, OTP collection showed a $2.6 million (or 7%) increase over FY17, which showed a $6.4 million increase (or 21%) increase over FY16. *See* Figure 1. The total increase in OTP excise collections from the past three fiscal years (FY17 through FY19) was predominantly attributable to a higher volume of taxed sales of smokeless tobacco products (from $16.7 million in 2016 to $23.1 million in FY19 – an increase of $6.4 million or 38.3%) over that period. The data also showed a significant increase in excise collections from taxed sales of cigars and smoking tobacco products over the last three fiscal years (from $13.7 million in 2016 to $18.2 million in FY19 – an increase of $4.5 million or 32.84%). *See* Figure 2. Unlike with cigarettes, the excise collection figures relating to OTP do not correspond with and are not explained by user or sales trends. In fact, the latest available data show that smokeless tobacco usage in Massachusetts has steadily remained near the lowest of all states for the past few years.[16]

Given the lack of a demographic explanation, the Task Force considers a likely reason for the dramatic increase in OTP excise collections the increased tobacco enforcement activity coordinated by the Task Force, based on the Task Force's stepped up civil and criminal enforcement activities. As a result of a robust enforcement model, 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.

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[12] Massachusetts tobacco excise rates did not change during this period. In fact, they have remained the same since July 31, 2013.

[13] https://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm (citing Maxwell J.C., *The Maxwell Report: Year End & Fourth Quarter 2017 Cigarette Industry*, Richmond, VA (2018) (accessed on February 14, 2020) (reporting a 3.5% decrease in the number of cigarettes sold in the United States from 2016 to 2017).

[14] https://www.cdc.gov/mmwr/volumes/67/wr/mm6702a1.htm?s_cid=mm6702a1_w (Centers for Disease Control and Prevention, *Cigarette Smoking Among Adults – United States*, 2016, Morbidity and Mortality Weekly Report; 67(2); 53-59 (dated January 19, 2018) (accessed on February 14, 2020) (reporting decline in current smokers nationwide from 20.9% in 2005 to 15.5% in 2016).

[15] https://nccd.cdc.gov/STATESystem/rdPage.aspx?rdReport=OSH_STATE.Highlights&rdRequestForwarding=Form (citing Behavioral Risk Factor Surveillance System (BRFSS)) (accessed on February 14, 2020).

[16] https://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/use_us/index.htm (citing Centers for Disease Control and Prevention, *Behavioral Risk Factor Surveillance System: Prevalence and Trends Data)* (accessed on February 14, 2020). In 2017, the rate of current adult smokeless tobacco use in Massachusetts was 2.3% while the usage rate in the District of Columbia (the lowest in the nation) was 1.3% followed by Rhode Island (1.5%), Maryland (1.6%) and California (1.7%). Conversely, the highest usage rate in the country was in Wyoming (9.8%) followed by West Virginia (8.5%).

This has resulted in a spike in tobacco excise collections -- both from violators that have been caught and punished by the Task Force and from an increase in voluntary compliance by those who have not been apprehended by the Task Force but have previously illegally avoided paying the required Massachusetts tobacco excise. Despite these notable successes, the illegal tobacco market in Massachusetts continues to operate, which serves to deprive the Commonwealth of millions of dollars of revenue in the form of tobacco excise taxes lost to the illegal market. The Task Force concludes that the problem of illegal tobacco smuggling is widespread and requires meaningful policy action at the state level to effectively control and ultimately defeat it.

B. Recent Laws Changes Concerning Tobacco Control

In its FY19 Annual Report, the Task Force noted particular concerns around the lack of regulation of retailers selling "vape" or "vapor products."[17] On November 27, 2019, Governor Charlie Baker signed "An Act Modernizing Tobacco Control" into law.[18] The new law results in several notable changes to the law governing tobacco products in Massachusetts, such as a ban on the retail sale of flavored tobacco products, as well as imposing new regulatory requirements and a 75% excise tax on the wholesale price of "vape" or "vapor products", now defined as "electronic nicotine delivery systems," held in Massachusetts.

i. Flavored Tobacco Ban

As of June 1, 2020, flavored tobacco products, such as menthol cigarettes, flavored cigars and flavored smokeless tobacco cannot be sold at retail. The sale of these products after June 1, 2020 in Massachusetts is restricted to sale at licensed smoking bars. The Task Force is in the process of gathering information concerning the potential effect of this flavored tobacco ban on retail sales of tobacco in Massachusetts. Specifically, the Task Force is considering the need for increased enforcement efforts concerning flavored smokeless tobacco. As noted above, there is currently strong motivation to smuggle such products from other low-tax states and sell them to in-state buyers willing to illegally evade payment of the applicable Massachusetts tobacco excise taxes. Now that the retail sale of flavored smokeless tobacco will be illegal in Massachusetts as of June 1, 2020, the Task Force expects there will be an increase in smuggling activity and black market sales.

ii. New Regulation of Electronic Nicotine Delivery Systems

The new law sets forth licensure requirements and imposes an excise tax, among other things, concerning the sale of "electronic nicotine delivery systems" in Massachusetts, as defined in M.G.L. c. 64C, § 7E(a) as follows:

> "Electronic nicotine delivery system", an electronic device, whether for 1-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from

[17] FY19 Annual report, pp. 4, 13-14.

[18] St. 2019, c. 133.

> the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.[19]

The new law defines the term electronic nicotine delivery system broadly (including any component parts, accessories, batteries, etc.) and imposes a 75% excise tax on the wholesale price of all electronic nicotine delivery systems.[20] The law also requires that electronic nicotine delivery system distributors and retailer obtain a license from the DOR to do so.[21]

III. Summary of Task Force Activities

Following the Task Force's submission of its FY19 Report on March 1, 2019, the Task Force has continued to meet on a regular basis to share information with member agencies, hear about recent developments in tobacco taxation and enforcement at the federal level and in other states, and to discuss important policy issues. The Task Force has convened six public meetings in the past year. These meetings took place on the following dates:

June 19, 2019
September 23, 2019
November 19, 2019
December 17, 2019
January 27, 2020
February 24, 2020

At these meetings, members discussed ways in which the member agencies can work together to improve tobacco compliance and enforcement. Specifically, the Task Force discussed the persistent need for a dedicated storage facility for seized tobacco products. At the December 17, 2019 meeting, the Task Force voted to move forward on a lease for storage space to be used by the State Police to securely store seized tobacco during the pendency of criminal prosecutions. The lease procurement process is currently underway and the Task Force has sought additional funding

[19] M.G.L. c. 64C, § 7E(a).

[20] M.G.L. c. 64C, § 7E(b).

[21] M.G.L. c. 64C, § 7E(h).

to cover the expense of the lease on a storage facility, which is part of the funding increase in the Governor's proposed budget.[22]

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.

In addition to its regular public meetings, the Task Force continued to successfully collaborate among Task Force agencies and enforcement action undertaken by the State Police and the Department of Revenue. While some of these efforts were conducted exclusively by Task Force member agencies, the Task Force also collaborated with federal law enforcement partners as well as other law enforcement agencies in several joint investigations. Below are some highlights from the past year:

- The State Police Detective Unit assigned to the Attorney General's Office has multiple active and on-going investigations throughout the Commonwealth, some of which are awaiting the sitting of a new Grand Jury for indictment. These cases have resulted in the discovery of thousands of invoices that will lead to multiple millions of dollars of tax loss to the Commonwealth.

- The Massachusetts State Police have assisted in and referred investigations to the Bureau of Alcohol, Tobacco, Firearms and Explosives, Alcohol and Tobacco Tax and Trade Bureau, and New Hampshire, Connecticut and Rhode Island Departments of Revenue for out of state inspections, investigations, and prosecution. Subpoenas have been served in various states in the Northeast U.S. for Massachusetts investigations. These investigations remain ongoing.

- A variety of technical equipment previously purchased by the Task Force has been deployed in furtherance of multiple investigations including covert cameras and GPS tracking devices. Cell phone ping warrants as well as historical cell site location warrants have also been utilized in investigations.

- The Massachusetts State Police currently have twelve open investigations into the smuggling and distribution of tobacco throughout the Commonwealth.

- A joint investigation by the State Police and DOR's Criminal Investigations Bureau revealed that a Massachusetts retailer licensed to sell cigarettes and cigars was selling illegal, unstamped cigarettes from 2015 through 2018. The investigation also revealed that the retailer used untaxed/unreported tobacco to fill its cigarette orders. This matter has been referred to the DOR's Miscellaneous Excise Bureau for the assessment of approximately $750,000 in cigarette and cigar/smoking tobacco taxes.

- The DOR's Criminal Investigations Bureau conducted investigations of two licensed

[22] *Id.*

distributors that were significantly underreporting tax liabilities related to OTP excise taxes. The total revenue loss to the Commonwealth identified in these two ongoing investigations is estimated to be approximately $1 million over the course of several years. The two cases were referred to the Attorney General's office for prosecution in September and October of 2019.

- The DOR's Criminal Investigations Bureau conducted investigations of two licensed distributors that were significantly underreporting tax liabilities related to OTP excise taxes. The total revenue loss to the Commonwealth identified in these two ongoing investigations is estimated to be approximately $1 million over the course of several years. The two cases were referred to the Attorney General's office for prosecution in September and October of 2019.

- The DOR's Criminal Investigations Bureau conducted investigations of two licensed distributors that were significantly underreporting tax liabilities related to OTP excise taxes. The total revenue loss to the Commonwealth identified in these two ongoing investigations is estimated to be approximately $750,000 over the course of several years. The two cases were referred to the Attorney General's office for prosecution in September and October of 2019.

- Pursuant to Task Force compliance and enforcement operations, the Department of Revenue's Miscellaneous Excise Bureau has discovered and seized contraband OTP 24 times in FY19, resulting in the seizure of nearly 3,545 tins (in total) of untaxed smokeless tobacco and a large quantity of premium cigars.

- Pursuant to Task Force compliance and enforcement operations, the Department of Revenue's Miscellaneous Excise Bureau suspended the tobacco licenses of seven tobacco retailers over the course of FY19. During routine compliance inspections, the Miscellaneous Excise Bureau conducted 28 cigarette seizures of 2297 total packs of illegal (unstamped) cigarettes in their stores.

The Department of Public Health continued to build and refine the Point-of-Sale Toolkit (POST), a database created by CounterTools and used by Task Force member agencies to collect real-time data and track enforcement and inspection visits in tobacco retailers throughout Massachusetts. The system will enable agencies to monitor enforcement actions undertaken in tobacco retailers throughout the state by viewing actions undertaken in an individual retailer over time, or by viewing actions undertaken in multiple retailers using various criteria of interest (such as date, geography, or agency). CounterTools is committed to continually improving system usability, and in FY20 made changes to the system to increase efficiency of data collection, including simplifying user interface, and making changes to data collection forms as needed. Going forward, CounterTools will continue to make changes to the system based on priorities identified by member agencies.

To train new users, CounterTools periodically offers web-based trainings (which include a live demonstration of the system); the next training is scheduled for Spring 2020. CounterTools also provides training webinars on specific topics (such as collecting data or

running reports) throughout the year, and all webinars are recorded and made available to member agencies to view as needed. With continued utilization, POST has the potential to enhance collaboration among member agencies and streamline enforcement activities.

IV. Legislative Proposals

Pursuant to its statutory mandate,[23] the Task Force has previously submitted legislative proposals in the reports it filed for FY16, FY17, FY18 and FY19. Those reports recommended specific measures to address the illegal tobacco market and specifically OTP smuggling, the segment where the black market is most active. In the FY19 report, the Task Force expanded on its earlier legislative proposals, adding recommendations that would (a) require the stamping of smokeless tobacco and (b) require vape retailers and distributors to register and obtain appropriate licensure.[24]

A. Status of Existing Legislative Proposals

As noted previously, recent legislatives changes will take effect on June 1, 2020. The Task Force must consider the effect of these new laws on it existing investigative and enforcement techniques before it is able to report updated legislative proposals. The Task Force has set a public hearing for Monday, March 23, 2020 at 10:30am and has solicited information from the public and various stakeholders concerning the following:

1. 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?

2. What is the expected business impact of the Act and what increased enforcement mechanisms by the member agencies could address this impact?

3. What data is available concerning black market sales of electronic nicotine delivery systems/vape products during the states recent ban on vaping that could inform the Task Force's next steps?

4. What are the current black market conditions for smokeless tobacco that might inform the Task Force's enforcement of the flavored tobacco ban moving after June 1, 2020?

5. How will the Task Force's member agencies responsibly dispose of electronic nicotine delivery systems that are seized in the course of enforcement actions?

[23] M.G.L. c. 64C, § 40(b)(4), (d).

[24] FY19 Annual report, pp. 11-14.

The Task Force seeks this information to inform its member agencies about investigative and enforcement challenges that they can expect as of June 1, 2020. One area of uncertainty involves the smokeless tobacco market, a significant percentage of which is understood by the Task Force to be flavored products. At this time, the Task Force is unable to renew and update its recommendation of stamping requirements for smokeless tobacco without a full understanding of effect of the flavored tobacco ban on the legal smokeless tobacco market. As noted in the FY19 report, the anticipated equipment cost to implement the smokeless stamping proposal was estimate at $1.458-$1.584 million.[25] Without information concerning the excise tax revenues for smokeless tobacco after the ban goes into effect on June 1, 2020, the Task Force is unable to adequately weigh the benefits of this estimated expense against the projected additional tobacco excise tax collections that would be generated by the proposal.

Another area of uncertainty for the Task Force is whether electronic nicotine delivery system enforcement is within its scope. Pursuant to the law creating the Task Force, it is charged with coordinating efforts to combat contraband *tobacco* distribution.[26] Although the new law broadens the definition of "tobacco products" found at M.G.L. c. 64C, § 1 to include the term "electronic nicotine delivery system," it remains unclear whether combatting contraband electronic nicotine delivery system distribution is within the scope of the Task Force.

B. Recommendation Concerning the Scope of the Task Force

The Governor Baker's House 2 budget recommendation, filed on January 22, 2020, proposes to expand the scope of the Task Force to include electronic nicotine delivery systems within the Task Force's enforcement efforts.[27] A budget increase for the Task Force accompanies the proposed scope expansion, presumably to fund increased enforcement obligations, among other expenditures.[28]

The Task Force recommends the passages of this clarifying language, along with the budget increases, bringing electronic nicotine delivery system enforcement clearly within the scope of the Task Force's scope and allowing the Task Force additional funding to address enforcement concerns presented by the regulation and taxation of the distribution of electronic nicotine delivery systems. This is particularly true where the Task Force expects significant overlap between tobacco distributors and retailers and the distributors and retailers of electronic nicotine delivery systems to be licensed and in business as of June 1, 2020. In addition to similar players for tobacco and electronic nicotine delivery systems, it bears noting that other similarities exist—such as an excise tax rate (75% of the wholesale price) that is significantly higher than

[25] Id. at 15.

[26] M.G.L. c. 64C, § 40.

[27] See House 2, filed January 22, 2020, §§ 53, 54, pp. 282, 283.

[28] *Id.*, Task Force on Illegal Tobacco 1201-0400, p. 74.

neighboring states.[29] Therefore, combatting contraband sales of electronic nicotine delivery systems, such as those purchased in smuggling from other low-tax states, will likely employ many of the same investigative techniques as those currently in use for investigating smokeless tobacco.

V. Anticipated Barriers

As discussed in the Task Force's report for FY19, increased investigative and enforcement activities has led to the seizure of larger quantities of illegal tobacco, resulting in a strain on the Task Force's storage capacity for contraband tobacco products. The Task Force has outgrown its current storage facilities and has spent time in the past year exploring other storage options to accommodate the growing amount of seized contraband tobacco, which must be preserved as evidence in connection with the Task Force's civil and criminal enforcement cases. Since July 1, 2019, the State Police has seized approximately $30,000 worth of untaxed tobacco products—a purposefully minimized amount due to the lack of an appropriate storage facility for seized tobacco evidence. Current tobacco storage is nearly at maximum capacity, which has led to an unusually low number of tobacco seizures. Due to this storage issue, most State Police cases are currently conducted as historical investigations requiring the location of invoices of purchases by Massachusetts smugglers.

Over the course of the last year, the Task Force discussed storage options. The State Police has begun the process of procuring an appropriately sized storage facility to address the storage problems the Task Force currently faces and going forward. The Task Force has sought additional funding for FY21 to allow for adequate leased storage space as well as routine destruction and remains hopeful that the Task Force will receive adequate funding in the future to support the maintenance of a storage facility. Additionally, the Task Force has discussed destroying seized product by shredding the product once criminal prosecutions conclude, thereby preventing the Task Force from quickly outgrowing a storage facility once leased.

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 upon its creation in 2015. While it has faced particular challenges concerning the storage of seized product and changes to the existing laws, the Task Force remains poised to continue in its enforcement efforts. With law changes concerning electronic nicotine delivery systems and a ban on flavored tobacco products set to take effect on June 1, 2020, the Task Force concludes that communication, information sharing, and targeting of investigative resources to combat contraband sales is just as vital today as it was in 2015.

The Task Force looks forward to solving its storage issues by supporting the procurement of a leased storage facility for the State Police to assist in increased investigation and enforcement. The Task Force is also focused on gathering information and insight about the ensuing flavored

[29] For example, New Hampshire imposes an excise tax of 8% of the liquid or gel containing nicotine only. Maine imposes an excise of 43% of the wholesale price of the vape device. Neither state has banned flavored vaping products.

tobacco ban and the new regulation of electronic nicotine delivery systems, to allow for updated legislative proposals aimed at addressing cross-border smuggling operations, as well as potential black market sales of flavored tobacco.