Greetings! I hope this message finds you well. I am amazed how quickly 2021 passed me by. For me, the last year seemed a lot like 2020 in many respects. I’m not sure how I’ll rate the year compared to my other years of life experience, but it probably won’t rank in my top ten! Even so, I am optimistic this year will be an improvement for us all albeit the pandemic persists. A number of my FTA state government colleagues retired over the last year and perhaps, there may be some within industry that have done the same. I just don’t know it presently. Jim Oliver of Kentucky, Jerry Leonard of Oklahoma and Sally Staufer of South Dakota have achieved this milestone. Though I’m disappointed I didn’t have the opportunity to congratulate them in person, I wish for each of them a long and fulfilled retirement. I know it is well deserved. All three of these individuals have been active participants within the FTA Tobacco Section and have served dutifully in varied leadership roles over the years. I commend them for their service. They leave big shoes to fill and I’ll certainly miss them. Jim, Jerry and Sally were some of the first individuals that welcomed me when I first started attending our FTA meetings. They quickly became mentors and friends. I cannot adequately express my appreciation in getting to know them over the years, the memories they created with me and for all the encouragement they provided me as I continued my progression of leadership with FTA.

I seek to encourage each of you to participate in the section’s uniformity efforts, available training sessions, regional meetings and the annual conference as events are scheduled. It’s your experience and expertise that make FTA an invaluable resource to us all. Back in 2019, I couldn’t have imagined I would still be representing you as your chairman in 2022. It remains my pleasure to serve and I am grateful for the opportunity. Stay safe and I look forward to visiting with you in the future.

Gerald Robinett
Message from Uniformity Committee Co-Chairs

We hope everyone had a wonderful holiday season and new year!. First, we would like to say we hope everyone is safe and healthy during these difficult times. Due to the ongoing COVID-19 pandemic many of us are again facing challenges. Many households are still classrooms, daycares, and full-time offices, but slowly things will hopefully start to get back to normal. We are happy to say our first in person Uniformity meeting will take place in Orlando FL January 25th thru the 27th. We hope that you can join us for a full discussion from our Compliance Subcommittee, Technology Committee, Forms Committee, Communication and Legislation Committee, and the Illicit trade group. There are many hot topics to discuss from the fast-moving changes in Vapor product, Synthetic Nicotine. We will also discuss PMTA status, FTA increases, electronic filing forms for cover pages and acknowledgements, and legislation updates and much much more we hope you can join us!!

Jason & Tim

Compliance Subcommittee Update

2021 was a tumultuous year for cigarettes and tobacco. As part of the Build Back better Act, Democrats proposed tax increases on cigarettes and tobacco that could have increased revenue by as much as $96 Billion. Among the tax increases proposed were doubling the tax on cigarettes, small cigars and roll your own tobaccos. Also included, a more than 16x increase on pipe tobacco, new taxes for e-cigarettes and a massive tax hike for premium cigars. This part of the legislation was dropped, but a $9 billion tax on nicotine pouches and vaping products was still on the table until recently. “While proponents of the vapor tax intend for it to ultimately dissuade users and provide additional revenue, an increase of such substantial proportion will have the opposite effect and push users to a burgeoning illicit market,” said Anna Ready Blom, NACS director of government relations. “But, when the price of a product rises too much too fast, illicit sellers will seize the opportunity to exploit and take advantage of current users and entice new users. This undermines the investments our members have taken to be responsible retailers and creates a problem for society as a whole,” Ready Blom of NACS said. As of now, it appears all FET tax increases and proposals for nicotine and tobacco products have been removed from legislation.

The deadline for PMTA applications and FDA review has come and gone and the FDA is still reviewing applications. E-cigarette manufacturers were required to submit PMTAs to the FDA by September 9, 2020, in order to legally sell products. As of today, FDA is still reviewing some of the nearly 6.7 million applications it received. Most notably, for JUUL and several other flavored e-cigarettes despite a September 9, 2021 deadline to complete the review. FDA uses a three-step process to review PMTAs. First, a determination is made whether the applications meet the minimum standard for review. If minimum requirements are not met, a refuse-to-accept (RTA) letter is issued to the manufacturer. Secondly, FDA assesses whether the applicant provided adequate information in the application for a scientific review. If this standard is not met, a RTF letter is issued. If all minimum standards are met, a scientific review team determines whether a marketing denial order (MDO) or a marketing granted order (MGO) is issued. Applicants may file lawsuits or ask for an internal review to reconsider an RTA, RTF or MDO decision. FDA contends the have reviewed 99% of applications and issued more than 1 million MDOs for flavored ENDS products (not including tobacco flavored). To date, manufacturers have filed legal challenges to 46 of the MDOs that were issued; 45 legal challenges remain pending. To date, FDA has rescinded, in whole or part, MDOs to a handful of companies and courts have issued temporary injunctions to at least three other companies. Although FDA makes MDOs public for existing products, it cannot disclose the actual brand names of products due to the nondisclosure of commercially confidential information.

Stay tuned for more on this front including the unfolding of flavor bans across the nation for tobacco products, including cigarettes and ENDS.

On another front, several states have legalized marijuana over the past year. A recap is below:

- Montana – recreational
- Arizona – recreational
- New Jersey – recreational
- South Dakota – medical (recreational use was first approved then later overturned)
- New York – recreational
- Alabama – medical
- New Mexico – recreational
- Connecticut – recreational
- Virginia – recreational

In closing, an interesting tidbit of information. New Zealand has passed legislation that will impose a lifetime ban on cigarettes for future generations by ushering in a grandfather approach to curb smoking.

We hope to see everyone healthy and happy at a future FTA meeting. Please let us know if there are topics you would like the compliance committee to cover as we are always seeking input on topics.

Joe & Kristin
**Forms Subcommittee Update**

Hello and welcome to 2022! We are looking forward to seeing everyone in Florida January 26 & 27. A lot has happened in 2021 and we want to make sure that everyone is up to speed. In Florida, we will be going over the forms that were voted on and accepted in 2021.

- PA-1 & PA-2
- Electronic Filing Receipt
- Acknowledgement document (Cover page)
- Uniform Incident form

If you have any suggestions for paper forms for the Forms committee to work on next or have questions on the current forms, please feel free to reach out to Marci Rosencutter (Kansas) or Helen Hayes (Coremark).

Marci & Helen

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**Uniformity Testimonies**

**Sue Nelson—Wisconsin**

In Wisconsin, we began our Uniformity Project early in calendar year 2018. By March of 2018 we were informing our customers about the move to uniformity, allowing them nine months to prepare for this change.

Wisconsin adopted the uniform schedules for cigarette and tobacco tax returns effective **January 1, 2019**. We mandated use of the new schedules for all filers, giving them the option of two filing methods – XML or via our online portal My Tax Account.

We’ve had the opportunity to speak with excise tax team members in other states as they contemplate the move to uniformity, and we are happy to serve as a resource to others. Here is a list of the key lessons that we have learned during this process. We believe this information may be very helpful to others.

**Lessons Learned:**
- Have a full project plan in place before you begin development
- Plan for a significant increase in data
- Set XML schema testing deadlines for customers early to ensure proper testing
- Develop a robust communication plan including training for customers
- Plan for a high level of customer support before and after roll-out (including system change requests)

**Toni Fields & Kim Hensley—Kentucky**

Kentucky rarely finds itself first in published state rankings. Unfortunately, we usually find ourselves at the end of lists like best place to live or work, and education. At last, Kentucky has made it to the top of a list in being one of the first states to implement Tobacco Uniformity. However, this ended up being the biggest obstacle in Kentucky’s transition.

As with any change, there is hesitancy and strife that comes with it. As I write this, I am sitting on the back end of implementation. I can say that the end result is well worth the hurdles we jumped to get there. KY DOR and taxpayers have seen the following benefits:

- Improved audit planning. More information is available prior to audit and allows us to pinpoint issues to focus. Provides an avenue to exchange information with other states and more easily allows the comparison of such data.
- Allows taxpayers to be compliant with PACT Act.
- Makes it easier for taxpayers who are filing in multiple states.
- Easier compliance, reporting, and tracking for MSA purposes.

For other states who ponder the decision whether to adopt Tobacco Uniformity, be prepared to handle the following issues:

- Time dedicated to working with a vendor to implement a new electronic filing system.
- Time spent in taxpayer education both prior to implementation and making corrections on initial filings. Filing with the new Uniformity guidelines was a big change for taxpayers. They had to move from paper to an electronic system. The Uniformity guidelines also required more information than they were used to providing. KY is still working through taxpayer reporting issues, mainly due to staff turnover and not attributable to the implemented uniformity standards.
- Training DOR employees on new procedures, crossmatch and system reporting.

Keep in mind these are temporary issues that lead to long term benefits. And you’re welcome, as Kentucky has traversed the rough terrain and paved the way for the next states to travel a smoother road to success!
Clarifying Authority Over Nicotine Act of 2021

On December 15, New Jersey Congresswoman Mikie Sherrill introduced the Clarifying Authority Over Nicotine Act of 2021—a bipartisan bill designed to give the U.S. Food and Drug Administration (FDA) the authority to regulate synthetic nicotine products just as it regulates nicotine products made or derived from tobacco. In a press release, Rep. Sherrill stated, “This bill will ensure all tobacco products, including products made with synthetic nicotine, are regulated by the FDA in order to protect kids in our communities and those who may seek to use these products.”

Proposed federal legislation and the unintended consequences on law enforcement operations—The US House of Representatives Ways and Means Committee is poised as of September 14th, 2021, to “mark-up” legislation that will result in an unintended adverse impact on policing. The current House tax proposal includes significant excise tax increases in all categories of tobacco products. As law enforcement executives we know how the underground economy will react to this additional cost. In addition to doubling the cigarette Federal Excise Tax (FET) rate, the proposal will equalize all other categories to that of cigarettes. Some products will experience over a 1,000% increase in the excise tax.

Increasing the FET on cigarettes and other tobacco products may reinvigorate interstate and international smuggling of cigarettes and other tobacco products at a time when enforcement at the southern US border is in experiencing crisis conditions. Nationally, law enforcement resources are stretched and with increased violence and other criminal activity. It is a matter of record that differentials in State Excise Taxes have accelerated interstate trafficking in contraband cigarettes and tobacco. This acceleration will likely prompt organized criminal enterprises and terrorist groups to seize upon these opportunities to replenish financial resources through illicit and smuggled products adding to human trafficking and other criminal activities. Further, it can be anticipated that growth will occur in international smuggling of counterfeit cigarettes and tobacco products. Experience has shown that countries such as China, Paraguay and Eastern European states in the Balkans may accelerate their efforts via transnational crime cartels to bring in these counterfeit products. And as history has demonstrated, in addition to the vast northern US Canada frontier, the Southern US Border may also become a significant entry point. Intelligence reports indicate that active Mexican drug cartels are poised to exploit the border conditions and view the conditions as an opportunity to supplant criminal activities that are higher risk. An additional concern for law enforcement is the process for how this contraband will be identified, processed, and warehoused.
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Uniformity Chairs
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State of Wisconsin

Tim Harris  
Eby Brown Company LLC

Communication and Legislation
Julian Daniels  
State of Texas

Dawn Evans  
McLane Company Inc.

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Governor

Shane Taylor, Wyoming  
Lt. Governor

Anthony Muller, Colorado  
Secretary

Swiggum Farm—Tobacco Harvest circa 1948
Welcome to the January 2022 Tobacco Uniformity meeting! The goal of the Technology Subcommittee is to fulfill the Uniformity Committee’s Mission Statement by providing approved Uniformity Guides and Schemas.

At the September 2020 meeting, the committee talked about the new schema update that included some small changes approved at the last meeting in June 2020. These changes were submitted to eStandards and are available on the FTA Uniformity website. We walked through the changes and showed the audience where to locate the eSurvey. If you are a state thinking of going to Uniformity, please review the information on the website.

The committee talked about the RYO brand code table. With the cigarette brand code table in place, the committee is still trying to get down to the granular level on RYO to include UPC. Once the tables are built, they can be plugged into the schema. The brand code table is helpful to identify product and manufacturer and for use with technology.

The technology committee also continued a discussion on the data to be exchanged between states, and what are the best practices for exchanging that data when the nature of the information is very confidential. One option proposed was a clearing house to hold the data.

Our discussion at this subcommittee meeting will include status and progress updates from states that have indicated they are planning or implementing a plan to go to E-file Uniformity.

This will be the first meeting for our new subcommittee co-chair Mike Hanson with California CDTFA. Mike may be new to the tobacco technology subcommittee, but he is no stranger to the schema for fuel or tobacco.

Mike and Mark

Communications and Legislation Subcommittee Update

White Paper Discussed Topics:

- Internet sales/Shipping thru the mail
- Digital vs Thermal stamping
- Cross Docking

If you would be interested in participating please contact the chair.
Communications and Legislation Subcommittee Update (cont. from pg. 4)

Wow, our first in-person meeting (for some of us)! These last couple of years have been crazy. It is hard to believe it has been two years (Myrtle Beach - January 2019) since we have gathered in the same room. Likewise, it has been over a year (end of September 2020) since we have had a meeting at all! For a recap of the most recent meeting held please check out the uniformity meeting minutes.

Since last meeting, the 2021 TTIbS was published. While we did not have a formal questionnaire in 2021, there were many states that had updates. Please check out the TTIbS at www.taxadmin.org/tobacco-tax-uniformity-project. During this meeting we would like to come up with a list of questions for 2022. Please start thinking about what you might want added to the publication.

Also planned for this meeting is a white paper reboot. While we officially have two white papers completed – Modified Risk Tobacco and Taxation of E-Cigarettes and Their Components – more are needed. Topics for white papers discussed at the last meeting included: Internet sales/Shipping through the mail, Benefits of Uniformity, Digital vs Thermal stamping, and Cross-docking. This is not an end-all list. We hope to come up with more ideas during this meeting. Volunteers for white papers are wanted!

On a bittersweet note, Sally Stauf-fer retired in June 2021. We all enjoyed working with her and wish her the best in her retirement. To replace Sally, we are happy to announce that Julian “JD” Daniels has joined the subcommittee. Welcome JD!

Dawn and JD

FDA NEWS

FDA’s premarket application deadline for cigars and OTP was officially extended by a Maryland judge. Originally the deadline was May 12, 2020 and will now be September 9, 2020.

U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
1-888-INFO-FDA (1-888-463-6332)

Training & Development Opportunities

FTA Tobacco Basic Training October
State & industry attendees will be trained on tobacco terminology, distribution of products, taxation, legislation, the Master Settlement Agreement (MSA), compliance, auditing, etc. In the past, attendees have toured a cigarette manufacturing facility. Date and place to be announced!
This edition of The Leaf Sheet edited by Julian Daniels

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FTA Tobacco Tax Section
Uniformity Committee
Mission Statement

Provide an opportunity for government and industry to partner for the efficient and effective reporting and remittance of tobacco taxes, to minimize tobacco tax evasion, and to act as an information resource to stakeholders.