

FTA Tobacco Uniformity Meeting Minutes Webinar September 30- October 1, 2020

The September/October 2020 FTA Tobacco Tax Section Uniformity Meeting was held via Webinar. Attendance varied throughout the two-day event depending on the topic. Specific attendance will be noted under each subsection.

Uniformity Chairs

State Co-Chair - Jeanne Thompson - State of Kentucky
Industry Co-Chair - Tim Harris - Eby Brown Company LLC

Subcommittee Chairs

Compliance

State Co-Chair - Joseph Noland - State of Ohio
Industry Co-Chair - Kristin Harrell - Associated Wholesale Grocers

Communication and Legislation

State Co-Chair - Sally Staufer - State of South Dakota
Industry Co-Chair - Dawn Evans - McLane Company, Inc.

Forms

State Co-Chair - Marci Rosencutter - State of Kansas
Industry Co-Chair- Helen Hayes - Core-Mark International, Inc.

Technology

State Co-Chair - Jason Kraemer - State of Wisconsin
Industry Co-Chair - Mark Triplett - Triplett & Associates/Swedish Match

Wednesday September 30, 2020

Jeanne Thompson Uniformity State Chair called the meeting to order. Jeanne welcomed everyone to the webinar and explained the layout of the meeting. There were approximately 131 attendees which is about 70% of those that registered.

The minutes of the June 2020 FTA Tobacco Uniformity webinar meeting were approved with one correction to the header fixing "2000" to "2020".

In total there were four handouts during this webinar - meeting minutes, meeting agenda, the registration list and Leaf Sheet.

Compliance Subcommittee

Joe Noland began the meeting indicating a total of 182 people were registered. Joe then introduced two guest speakers, Richard Parrott -California Cannabis Cultivation Division Director with California Department of Food and Agriculture and Alex Spellman, VP Business Development for SICPA.

Richard Parrott started with a **CalCannabis Cultivation Licensing Division update**. He indicated they are one of three licensing agencies in the cannabis space. Richard explained the difference between agencies and stated effective July 2021 there will be a new department that will merge all three departments together.

Richard began his presentation showing the top ten California counties with licenses. These included Humboldt County - 1,454, Santa Barbara County - 1,295, Mendocino -777, Monterey - 518 and Trinity -

325. The licensing division is getting about 150 new applications every month. There is licensing at both the local and state level. Adult use licenses account for 71% of the licenses while medicinal account for 29%. Licenses issued by size include - small 64%, specialty 16%, medium 9%, nursery 5%, specialty cottage 4% and processor 2%. The number of licenses is limited for medium (up to one acre of canopy). Licenses issued by type include - mixed-light tier 37%, outdoor 36%, indoor 12% and nursery 5%. The light tier depends on wattage.

The state started out with temporary licenses that will move to annual licenses that will become permanent. The department found that many temporary license holders would not qualify for annual licenses. For example, businesses in retail space that were not able to finalize their building permits. Licensees need to show they are working towards the requirements of the annual/permanent license. Environmental scientists go out to the licensees to check water source and quality, pest management, waste-management plan and property diagram.

There are three branches to the licensing department - Licensing (includes scientists), Compliance and Enforcement (audit track and trace, ensure regulations are being followed, work with other agencies and local law enforcement) and Administration.

Richard presented the annual license application review process flow showing all the requirements and check points that are in place. Verification points include - confirmation of the physical address, checking for the right to occupy, criminal history, live scan fingerprints, scientific review (CEQA compliance), seller's permit, surety bond, business formation documents, premises and property diagram, cannabis waste and storage of pesticides, to name a few. Once approved, applicants have 90 days to pay the license fee. Cultivators who have not paid the license fee cannot legally operate and engage in transfer of product.

There is a California Cannabis Track-and-Trace System (CCTT). Both annual and provisional licensees must use the track and trace system. This includes getting approval, tags, acknowledgment of receipt and entering of their data. They have three calendar days to report all activity into the system. Licenses can be revoked for being delinquent in completing the requirements.

The Compliance and Enforcement branch takes weed-tip hotline complaints and validates track and trace compliance. Currently they are 42 investigative staff, eight CCTT admin staff and four branch support staff. The enforcement authority side has the authority to give out fines. Most severe fine is \$30,000 per license. If engaged in unlicensed activity they could be fined \$5,000/day/violation. Engaging without a license could lead to civil penalties up to three times the amount of the license fees.

Stats to date: 850+ CCTT inspections, 154 criminal search warrants, 7 citations under review for fines (62 in process) and 402 complaints via the hotline.

For more information:

www.Calcannabis.cdfa.ca.gov

1-833-CALGROW

calcannabis@cdfa.ca.gov

Alex Spellman put on his cannabis suit jacket and gave a **cannabis update**. Cannabis is starting to become mature market with regulated programs. There is a potential of programs via ballot initiatives. As of June 2020, 33 states allowed cannabis for medicinal use and 11 states for recreational/adult use. There are different methods and means to regulate and to tax. Current issues states are facing include Delta 8 (higher than .3% THC) vs Delta 9 THC (.3% THC), flavor and product restrictions, social equity inclusion and California appellations program. On the federal level, this product is still illegal under Controlled Substances Act (CSA). Cannabis is fully legal on the recreational side in Canada - other countries include Uruguay, Mexico and Germany. In Canada, cannabis can be

bought online and paid via credit card. International trade potential will open up as more countries legalize it. The upcoming presidential election will have impact.

Hemp is classified as a cannabis plant with THC of less than .3%. Industrial hemp is legal under the 2018 U.S. Farm Bill. Currently, 47 states allow for some form of hemp cultivation. States that prohibit commercial hemp cannot prevent legal hemp from moving across state lines under the 2018 U.S. Farm Bill). Hemp cigarettes are excluded from flavor restrictions. Some states are taxing this product like a cigarette.

CBD from hemp will intersect regulated cannabis markets. CBD can be derived from either hemp or cannabis. Cannabis and hemp come from the same plant Genus. It is basically indistinguishable from the naked eye and THC ratio can only currently be determined through lab testing. There are lots of examples of product being seized due to the inability to determine whether it is cannabis or hemp.

Helpful hemp websites:

www.3chi.com

www.BearlyLegalHemp.com

What does the future hold? Policy will continue to evolve. There will be tinkering and refinement between FDA and DEA. It is likely that there will be federal recognition of these products. This will impact import and export and employment.

On the technology side there has been evolution. This includes secure eID, specialized product designation, blockchain for interfacing and integration, consumer engagement (web-based and mobile), health and safety communication, digital labeling and alignment. Currently there is no consistency in product categories, labeling, etc. Cannabis might be a good product to test out various technology tools which could contribute to expansion of those tools into other product lines. There is a need to ensure product security. Current control models tend to focus on plants and the securitization of the physical product falls away as you move toward point of sale - unable to determine whether business and product is legitimate. Canada does have a CRA stamp on cannabis product.

Alex.Spelman@sicpa.com

Mark Triplett presented **mail order cigars**. Mark explained the difference in mass market cigars versus premium (high value, low quantity) cigars. In 2017 there was 330.1 million premium cigars exported, the most since 1998 with Nicaragua the biggest supplier. Handmade cigar imports to U.S. will likely top 400 million despite the virus. Premium cigars can retail as much as \$90 per cigar. More sales have moved to the on-line space. Data shows that 75%-85% of cigar dollars spent are spent on-line (up from 50% due to Covid). The states are not seeing or getting the revenue from these sales. So far, only two states have mandates (OH & MD) to collect tax for online sales of tobacco. No state has a clear-cut method to collect tax without a statute change.

There is no specific authority or mechanism to collect excise tax (online sellers are collecting and remitting sales tax). There are barriers at the state level to collect excise tax. These include: 1. Establishing the taxable value or base is difficult if it is taxed on \$ versus sticks (what is the tax basis - hard to verify truthfulness) 2. No clear point of taxation and who is liable 3. No clear uniform licensure structure to allow online sellers to be licensed.

Mark showed maps of how cigars are taxed across the country. There is not a way to tax that is consistent across states. Mark met with 11 states one-on-one. Are we on the right or wrong track with finding solutions? In West Virginia the consumer would be liable for the tax and they can self-report on their personal income tax. Several states have a use tax type clause. Cigar e-commerce companies want a level playing field with in-state sellers. Mark's team is ready to start drafting model legislation.

Next, **Joe Noland** presented on **inspections, audits and investigations during Covid-19**. Joe polled the audience on who was working from home. Results: 38% at home since Covid, 53% hybrid and 9% always been at home even before Covid.

During Covid-19, Ohio inspections were suspended - found that Covid-19 was a great time to go through criminal complaints. Agents were doing phone interviews. Other states were asked about their Covid experiences. Desk audits and PPE were discussed. Seemed that the focus was compliance rather than enforcement during these difficult times.

Kristin Harrell did a presentation on **alternative nicotine products**. She gave industry's perspective and the scramble when looking to purchase new nicotine products. She explained products deemed Modified Risk Products (applicable for five years) and the types of alternative nicotine products - IQOS, ENDS (21 states tax either based on price or volume).

Joe talked about **PMTA** which was extended to 9/9/21. The FDA will prioritize enforcement of flavored, cartridge-based ENDS products. So far, the FDA has received around 2,000 applications for deemed products. Premium cigars are not included in the PMTA at this time. The FDA is to publicly make available a list of the new deemed tobacco products.

Technology Subcommittee

Jeanne welcomed everyone back and reviewed the attachments to this webinar. In total there were five - E-Commerce Cigar Sales Uniformity (from the morning Compliance session), Compliance PowerPoint (from the morning session), Technology presentation, meeting agenda and the tobacco registration list.

Before going into the Technology presentation, Mark finished up the morning discussion of mail order cigars. Mark outlined some model legislation and talked about maintaining a price list data base so the value would be known by all (a standard table for the taxable value of premium cigar products). One thought is to license the delivery seller (like WI does for consumer delivery of wine) both in-state and out-of-state. Online sellers are required to have age 21 built into their software. Only UPS and USPS deliver this product. It is believed that FDA will require age verification at delivery point soon.

Jason talked about a **new schema update**. Some small changes (amended return file names, new Enumerations for tax types) were approved at the last meeting in June 2020. These changes were submitted to eStandards and are available on the FTA Uniformity website. Jason walked through the changes and showed the audience where to locate the eSurvey. The newest version for tobacco is V1.4 and V2.2 for cigarette. If you are a state thinking of going to Uniformity, please review the information on the website.

Covid may be a challenge for states to move to Uniformity. In addition, Jason asked some questions on what states were dealing with because of Covid. Was there a decrease in programming resources? What about a delay in implementation? Was collaboration affected? Did your workload increase?

Cindy launched a polling question - has C19 decreased your programming resources? 16% yes, 84% no

Mark talked about the **brand code table**. The cigarette brand code table is in place on the FTA website. RYO and OTP are still a work in process. The team is still trying to get down to the granular level on RYO to include UPC. A source was found for the RYO part of the table -the biggest RYO worldwide supplier. 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. It is an important data element for populating data for eFiling. RYO would come first because of MSA reporting. A request was made that the table be posted as the information is received.

When it comes to **exchanging of data**, is a clearing house the best option? Who should maintain the clearing house? Mark talked about blockchain. It is common to have data that needs to be protected and data that does not need to be protected in the same file. The goal is to share information in a common format. Kentucky, for example, is zipping the files when sending them out. Some states have strict disclosure policies. Indiana does get data from Illinois, but Indiana does not send data out. They are in the middle of switching to FAST. The nature of the information is very confidential. A lot of things should be assessed first - like, are states comfortable with this? Helen mentioned that this

was one of the keys to Uniformity - information sharing. Kara Parga suggested a working group be created on this topic. Email Jason or Mark if you are interested. It was noted that it is hard for some of the small distributors to get FEIN numbers. On the Industry side, state data sharing should reduce time responding on audits.

Kentucky and Wisconsin shared their experiences with Uniformity. Wisconsin indicated it was a lot of work up front but now, smooth sailing. All the data is being processed. Kentucky indicated that there was a definite learning curve - both with the state (new system to learn) and filers (missing FEIN's and license numbers).

Jason noted that the FTA Electronic Filing Guide was last updated in May 2020 and will be updated again.

Thursday October 1, 2020

Forms Subcommittee

Jeanne started out the meeting presenting Uniformity 101. Next, Tim Harris mentioned that Sally Stauffer will be retiring in June 2021. Much kudos for all she does and has done.

Helen reviewed the agenda. First topic is **eliminating cigarettes with 25 sticks/pack**. Are these really being eliminated? Altria indicated they delisted these cigarettes earlier in 2020. Jeanne understood that 25s have stopped production and wholesalers have been asking to return unused stamps. Chris from New York indicated his agent heard that 25s would not be made anymore. Kara from SIPCA/Meyercord indicated that they would continue to offer 25s if the states wanted them.

Wholesalers are wondering if states would allow returns or allow the stamps to be affixed to cigarettes with 20 sticks/pack. Industry preference is a cash or credit refund. Nebraska is allowing the return of unaffixed 25s and will give credit or possible refund. Wisconsin is also refunding unaffixed 25 stamps. Montana is refunding. They were asked about little cigars packaged in packs of 25 sticks but no one has seen little cigars of that size. Oregon has a ballot measure in November 2020 that will tax little cigars as cigarettes and stamp as such. Oregon is refunding 25s.

PACT Act forms were discussed and the addition of ENDS. Helen showed what the form currently looks like and explained what may need to be changed. Someone asked about hemp cigarettes - depends if the FDA classifies it as a cigarette. Helen indicated we will need to wait and see how the Feds want ENDS reported on PACT. Kara made a plug for Uniformity. PACT form talk was tabled until we get further guidance when the bill passes.

Helen gave an overview of all the forms. She showed the tobacco cover page both for in-state and out-of-state and the sales-based cover page. Next Helen outlined the assumptions for the **cigarette cover page**:

Two versions - resident versus non-resident with separate pages for 20s vs 25s. The form will reconcile cigarette and stamp inventory and will include pack, stick and value data fields.

Helen explained what items would be tabled for a future discussion (stamped little cigars, PM/NPM and special fees and payments). These are complexities they are holding to the side for now until a basic cover page can be developed and agreed upon.

Helen reviewed questions received from last meeting and showed the form presented in June 2020. Questions -> where are the exemptions located on the form (Indian or Military)? Helen explained that the cigarette cover page is for comparing stamps to inventory. Line 8 is stamps used and should have left the building. This is compared to sales. Kara mentioned that the state needs to consider the adjustments and determine which is important to them. The adjustments are not a way to get out of a tax liability and the wholesaler may owe tax on some adjustments depending on the state's rules. Helen ran through the resident return which reports all activity going through the filer's location (all cigarettes going in and out of the building). Helen pointed out on the supporting schedule where the

data comes from. Indiana is looking at different cover pages from different states - this cover page does not get Indiana where they want it to be. Could we call it a Uniform Summary page? Jeanne indicated that all the suggestions should be written down to be discussed at the next meeting. Helen's last slide reminded us of all the forms that are already in the guide.

Communication & Legislation

Terri pointed out that all the information Communication and Legislation was presenting is on the FTA website and available for download. Terri then shared how to access the FTA Uniformity materials on the website.

There were 120 people in attendance.

Five handouts were given during this session - Communication and Legislation PowerPoints (2), FTA E-Cig White Paper, Modified Risk Tobacco Products 3.0 and Tobacco Tax Information by State v08.1-2020-4.

Dawn gave an update and the history of the **TTIBS Publication**. The "map of shame" (but not this year) showing state response rates was presented - it was impressive. Hats off to the states! The finalized 2020 version is on the FTA website.

The committee is looking for the next set of survey questions. Thoughts include - questions on hemp and CBD - no question is a bad question. The survey timeline is as follows: January -> list of questions started; March -> finalize questions; April -> send out questions; June -> responses received; August -> final publication.

Cindy asked for a show of "virtual hands" of how many have looked at TTIBS and have used the information - lots of hands went up. Probably 50% of attendees!

White Papers were discussed. A white paper is an authoritative guide used to give an understanding of a topic. Two white papers are completed:

- Modified Risk Tobacco
- Taxation of E-Cigarettes and Their Components

Modified Risk Tobacco:

Rob Walker presented the Modified Risk Tobacco white paper. He along with Al Milak (NC) and Jim Oliver (KY) worked on this. Rob explained that the Family Smoking Prevention and Tobacco Control Act created a regulatory path for marketing claims - Risk Modification Order / Exposure Order (reduces or eliminates exposure on future health and studies). These products are put through an evaluation. The white paper describes the products and how they impact the tax world. North Carolina, Connecticut, Washington, Kentucky and Colorado have statutes whereby once have this designation, then the tax rate is reduced. Tax rate reduction may be tied into whether Risk Modification Order or only Exposure order.

Al Milak pointed out key takeaways from a state perspective. These things can pop up very quickly. It is important that you talk to your legislators and consider language in the statutes. Work with Industry to update forms and any system modifications that would be needed. For North Carolina, this has been smooth and fit well within their existing tax forms. Working with industry and manufacturers was key.

Taxation of E-Cigarettes and Their Components:

Kara Parga presented this white paper. She along with Helen Hayes, Joy at California CDTFA, Rob Walker and Mike Albin worked on this white paper. It is important to understand how these products are classified by federal and state governments. The team looked at state taxation. This was a difficult white paper because they started early, but things kept changing during the drafting of this white paper. The paper provides five different state examples of taxation - Minnesota (earliest to tax - based on cost), North Carolina and Louisiana (next to tax based on volume), New York (tax applied at

retail level similar to a sales tax) and Washington (hybrid model, depends on if the system is “open” or “closed”). This white paper will become dated within a few years, but it is a good resource now.

Ideas for new white papers was discussed. Using polling, here are the topics that the audience thought would be good for a white paper:

- Internet Sales/Shipping thru mail – 77%
- Benefit of Uniformity – 5%
- Digital vs Thermal stamping – 14%
- Cross-Docking (changing which truck the product is on) -5%

Next volunteers are needed with the goal of having a white paper started to discuss next year.

Legislation Update: James Pulisfer clarified that IQOS would need to be on PACT reporting as the product is treated and taxed as a cigarette on the Federal level.

Sally shared the Legislation Update aka “The Lists” using data gleaned from the TTIBS. Topics covered included:

- State cigarette tax rates
- States taxing e-cigarettes
- FDA news
- States taxing tobacco papers and tubes
- IQOS – currently sold in GA, NC and VA
- States stamping little cigars (also a great white paper topic)
- States taxing little cigars like a cigarette but not stamping
- States not taxing cigars/premium cigars
- States with Modified Risk statutes
- Minimum age to purchase tobacco or vaping products
- States with legalized cannabis (recreational)
- States with medicinal cannabis
- States with legal hemp

Chris from New York shared that the effective 10/1/20 the definition of wholesale price has been amended. Colorado shared that they are set to raise tobacco taxes and include modified risk. In Virginia, effective 7/1/21, counties will be allowed to impose their own tax.

The meeting was adjourned at 3:49 ET.

Next Meeting

The next Tobacco Uniformity meeting will be January 26-27, 2022 at the Rosen Plaza Hotel in Orlando, Florida.

Motions and Approvals

- Jeanne Thompson moved to approve the June 2020 meeting minutes. Marci Rosencutter seconded the motion. The motion passed via polling of 45% yes, 0% no, 55% did not present.

- Helen Hayes moved to accept the Modified Risk Tobacco white paper. Sally Stauffer seconded the motion. The motion passed via polling 100% - yes.
- Jeanne Thompson moved to accept the Taxation of E-cigarettes and Their Components white paper. Jason Kraemer seconded the motion. The motion passed via polling 100% - yes.

Committee Changes (as of June 15, 2021)

- Uniformity Chair: State Co-Chair -> Jason Kraemer - State of Wisconsin has replaced Jeanne Thompson - State of Kentucky
- Communication and Legislation: State Co-Chair -> Julian Daniels - State of Texas has replaced Sally Stauffer - State of Wisconsin
- Technology: State Co-Chair -> Mike Hanson - State of California has replaced Jason Kraemer - State of Wisconsin

Future Meeting Dates

Central Region

April 6-7, 2022
Homeward Suites
Fargo, North Dakota

Western Region

April 27-28, 2022
Sheraton Tucson
Tucson, Arizona

May Uniformity

May 11-12, 2022
Red Lion Downtown
Boise, Idaho

Northeast Region

May 25-26, 2022
Crown Plaza
Annapolis, Maryland

Southern Region

June 29-30, 2022
Embassy Suites
Charleston, West Virginia

Uniformity

August 19-20, 2022
Double Tree Hotel
Portland, Maine

Tobacco Annual Meeting

August 21-24, 2022
Double Tree Hotel
Portland, Maine