



TOBACCO RETAIL COMPLIANCE CHECKS

A Review of Best Practices



Tobacco retailer compliance checks are inspections of commercial tobacco product retailers to ensure compliance with tobacco control laws.¹ These checks are a necessary element of tobacco control policies, because they assess the effectiveness of laws and policies, promote compliance, and provide guidance for future enforcement and policymaking.²

The following best practices are recommendations for jurisdictions creating tobacco control laws and policies. These practices should be included in a jurisdiction's respective law or policy to ensure they are applied consistently.³



Brighton, Michigan

Photo: Linda-Nordeen via CounterTobacco.org

1. Compliance Checks Should Be Unannounced

Tobacco retailers should not be aware of when a compliance check will occur. If a retailer knows to expect a check, the results will be skewed. Research shows that violations are found significantly more often when a retailer has no warning of the compliance check.⁴ There are potential benefits to announced compliance checks, such as the opportunity for formal retailer education.⁵ However, those announced checks should not be the only method; announced checks should only serve as supplemental to unannounced compliance checks.

2. Determine Frequency of Compliance Checks

A jurisdiction should have a policy for how often compliance checks must be conducted.⁶ There are multiple ways to do this. The best practice is to set a minimum number of compliance checks that each retailer must undergo in a timeframe.⁷ For example, Connecticut requires that no retailer go longer than eighteen months without a check.⁸ Similarly, Minneapolis, Minnesota, requires compliance checks to be conducted at least annually at each location where tobacco is sold.⁹ Alternatively, a jurisdiction could require a minimum number of compliance checks to be completed by the enforcement agency per year. A jurisdiction can also combine these approaches.

3. Follow-Up for Non-Compliant Retailers

When a retailer violation is found, that retailer should be revisited for another compliance check.¹⁰ A jurisdiction may choose to make this time-limited, which requires the follow-up to occur within a certain timeframe. This process is recommended because retailers with a history of non-compliance are more likely to violate the law again.¹¹ Follow-ups also provide compliance officers with an opportunity to educate retailers on the requirements.

4. Target High-Risk Retailers

If a jurisdiction has limited resources for compliance checks, priority should be given to high-risk retailers. The definition of a high-risk retailer can vary, but is typically dependent on the presence of past violations.¹² Some jurisdictions have chosen to implement public complaint systems, in which case the presence of a complaint may also qualify a retailer as high-risk. These retailers may be targeted by requiring more frequent compliance checks or, in the case of limited resources, only checking these retailers.



West Yellowstone, Montana

Photo: CounterTobacco.org

5. Dispersing of Compliance Checks

Spreading out the compliance checks chronologically and geographically is beneficial because it adds to the element of surprise. For example, while it would save resources to check multiple retailers in one facility together, doing so could interfere with the accuracy of the check.¹³

6. Only Penalize Retailers

If a compliance violation is found, any penalty should be directed at the retailer.¹⁴ An employer is ultimately responsible for the conduct of its employees and has substantially more resources than an individual employee. If a jurisdiction does choose to penalize the individual employee, penalties should be limited to non-criminal, non-monetary penalties.¹⁵ For a discussion of why individual consumers should not be penalized, see the Public Health Law Center's publication on *Youth Purchase, Use, or Possession Penalties (PUP)*.

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Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. In comparison, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 *Assessing Compliance with Smoke-Free Laws: A “How-to” Guide for Conducting Compliance Studies*, Int’l Union Against Tuberculosis & Lung Disease, Campaign for Tobacco-Free Kids, & Johns Hopkins Bloomberg Sch. Pub. Health (May 2014), https://www.tobaccofreekids.org/assets/global/pdfs/en/SF_compliance_guide_en.pdf; *Compliance Checks of Alcohol or Tobacco Retailers*, WYO. PREVENTION DEPOT (July 10, 2018), <https://www.wyomingpreventiondepot.org/strategies/strategies/compliance-checks-of-alcohol-or-tobacco-retailers>.
- 3 *Raising the Tobacco Sale Age to 21: Building Strong Enforcement into the Law*, TOBACCO 21 (Apr. 20, 2016), <https://tobacco21.org/wp-content/uploads/2016/05/Memo-T21-enforcement-FINAL-4.22.16.pdf>.
- 4 Matthew Philip Makofske, *Inspection Regimes and Regulatory Compliance: How Important Is the Element of Surprise?*, 177 ECON. LETTERS 30 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0165176519300011>.
- 5 *Enforcement/State Compliance Inspection Checks*, Conn. State Dep’t Mental Health & Addiction Servs., <https://portal.ct.gov/DMHAS/Prevention-Unit/Prevention-Unit/TPEP---EnforcementCompliance> (last visited Nov. 10, 2022).
- 6 *Tobacco 21: Model Policy*, Campaign for Tobacco-Free Kids (Aug. 6, 2019), https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/2019_08_06_tobacco21_model_policy.pdf.
- 7 *Raising the Tobacco Sale Age to 21*, *supra* note 3.
- 8 *Enforcement/State Compliance Inspection Checks*, *supra* note 5.
- 9 *Raising the Tobacco Sale Age to 21*, *supra* note 3.
- 10 *Id.*
- 11 Hongying Dai et al., *Using Place-Based Characteristics to Inform FDA Tobacco Sales Inspections: Results from a Multilevel Propensity Score Model*, TOBACCO CONTROL (2021), <https://tobaccocontrol.bmj.com/content/early/2021/10/24/tobaccocontrol-2021-056742>.
- 12 *Id.*
- 13 Makofske, *supra* note 4.
- 14 *Raising the Tobacco Sale Age to 21*, *supra* note 3.
- 15 *Tobacco 21: Model Policy*, *supra* note 6.