

This document is for guidance purposes only.

## **CONFISCATION OF BANNED PRODUCTS**

Amended 4/11/22

- Confiscation is not recommended. However, if you are considering confiscation, please remember that should be a municipal decision. Please consult with the municipal attorney and the health director. The decision should be made ahead of time as part of a municipal protocol.
- If your municipality compels you to confiscate, violations that might prompt confiscation of products include:
  - Prohibited flavored product or flavor enhancer product;
  - Prohibited level of nicotine strength at convenience-type store;
  - No manufacturer letter that attests that a product is not flavored or does not have the required percentage of nicotine. This applies to all convenience stores and adult-only retail tobacco stores.
- Do NOT consider confiscation of products missing tax stamps.
  - Instead, contact DOR so they can review the store's invoices for proper taxation. DOR cannot check any confiscated inventory if it is removed from the store. (See boxing up instructions below.)
- Additional suggestions for boxing up products:
  - Carry a couple of boxes, tape and a marker in your vehicle.
  - Take photographs of the location within the store where you found the product.
  - Instruct and observe the retailer box up questionable products.
  - Take an inventory of products.
  - Take photographs of products.
  - Take photographs of both products in opened boxes and of each sealed box
  - Sign, and have owner sign and date each box over packing tape.
  - If there are multiple boxes, use the "1 of 2, 2 of 2" notation method to ensure recordkeeping accuracy.
  - Have retailer sign the receipt and keep of copy for the BOH by taking a photograph of it.
  - Give retailer a receipt of products boxed and held in store.
  - Send photographs to DOR and let them know the total number of disputed boxes. *(Refer to MTCP's "ITTF Report Form Guidance" for process of reporting to DOR.)*
- Suggested guidelines if you must confiscate:
  - Document untaxed products according to above guidance.
  - Take only those flavored products that you know are properly taxed.
  - After taking pictures as described above, inventory and box products.

- Give retailer a receipt for products.
- Take products to the health department, re-inventory them to create an evidence log.
- Put all confiscated products in a locked area.
- What to do with confiscated products:
  - The health department should keep all tobacco products until the matter is concluded.
    - This means once the fine has been paid and/or all hearings have been held and no appeals are pending.
  - Destroying confiscated products:
    - All ENDS products are considered hazardous waste and must be disposed of according to federal and state protocols. The police department, the recycling coordinator, or the hazardous waste committee in each municipality might be helpful with guidance on how to do this
    - Other tobacco products can be disposed of in keeping with your standard operating procedures.