

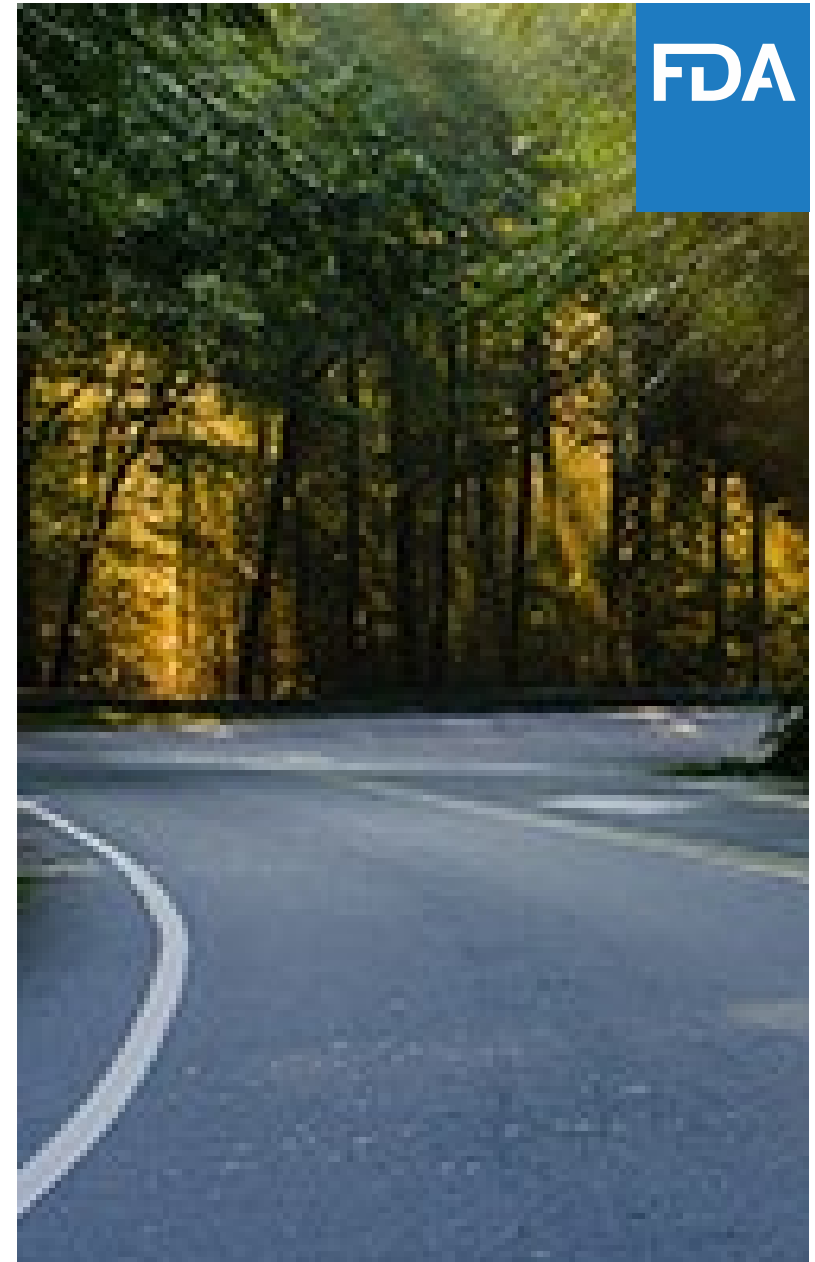
# THE 5 Ws OF UNDERCOVER BUY COMPLIANCE CHECK INSPECTIONS

CENTER FOR TOBACCO PRODUCTS

*Disclaimer: This is not a formal dissemination of information by FDA and does not represent Agency position or policy.*

# AGENDA

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# TYPES OF COMPLIANCE CHECK INSPECTIONS

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- The Tobacco Control Act gives FDA authority to inspect retail establishments.
- CTP conducts two types of compliance check inspections to confirm retailer compliance with federal law:
  - Advertising and Labeling Inspections
  - **Undercover Buy Inspections**

# 5 Ws OF UNDERCOVER BUY INSPECTIONS

- Who conducts the Undercover Buy inspections?
  - FDA commissioned inspectors complete FDA training and act on behalf of the FDA.
  - FDA contracts with states, territories, and Tribes to inspect retail establishments within their jurisdictions, where feasible.
  - FDA awards contracts to third-party entities that hire commissionable inspectors to conduct compliance check inspections of tobacco retailers in those states and territories where FDA has not been able to contract with a state agency.
  - Inspectors conduct compliance check inspections of tobacco retailers and send evidence of potential violations to FDA for review.

- What occurs during an Undercover buy inspection?
  - Undercover Buy Inspections involve the use of an underage purchaser under the supervision of an inspector(s).
  - During the inspection, an underage purchaser will attempt to purchase a tobacco product, allowing FDA to determine whether the retailer is in violation by:
    - Selling a tobacco product to an individual under 21; or
    - Failing to request the photo ID of a person under the age of 27 who attempts to purchase a tobacco product.
- Retailers must not sell a tobacco product to an individual under the age of 21 and they must check the photo identification of anyone under the age of 27 who attempts to purchase a tobacco product.

- What other violations may be noted during an Undercover Buy inspection?
  - Other potential violations of federal tobacco laws and regulations may also be reported to FDA by the inspector during this undercover buy inspection. These may include, but are not limited to, sale of individual cigarettes, and the ability to access a vending machine or self-service display in an area that is not age restricted.



- Where are Undercover Buy inspections conducted?
  - Undercover Buy inspections are conducted at brick-and-mortar tobacco retailer locations across the United States, U.S. territories, and on Tribal land.

- When will these inspections take place?
  - Compliance Check Inspections are not preannounced to the retailer.
  - During Undercover Buy inspections, you will not be aware that you are being inspected by FDA.
  - Neither the minor nor the inspector will identify themselves during an undercover buy inspection.

- When will I hear from FDA if potential violations are found during an Undercover Buy inspection?
  - If an inspector reports that an underage purchaser was able to enter your establishment and make a tobacco purchase during an inspection, FDA will mail a Compliance Check Inspection Notice shortly after the inspection.
  - Once FDA has reviewed the inspection evidence, if violations are found:
    - Generally, FDA sends Advisory Actions (*e.g.*, Warning Letters) for the first time an inspection reveals a violation of federal tobacco laws and regulations
    - Failure to promptly and adequately correct all violations and ensure compliance with all applicable laws and regulations may lead to:
      - Administrative Actions (*e.g.*, Civil Money Penalties or No-Tobacco-Sale Orders)
      - Judicial Actions (*e.g.*, seizure, injunction, or criminal prosecution)

# WHEN



- Brick and mortar retailers can check their inspection history on the FDA ‘Compliance Check Inspections of Tobacco Product Retailers’ Database.
- Available at: <https://timp-ccid.fda.gov/>.

- Why does FDA conduct these inspections?
  - The Center for Tobacco Products (CTP) is responsible for carrying out the Family Smoking Prevention and Tobacco Control Act.
  - In 2009, the Family Smoking Prevention and Tobacco Control Act,(TCA), amended the Federal Food Drug, and Cosmetic Act (FD&C Act) to give the FDA authority to regulate the manufacture, distribution and marketing of cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and other tobacco products that the agency, through regulation, deems to be subject to the law.

- The 2016 Deeming Rule extends FDA’s regulatory authority to cover additional products, except their accessories, that meet the definition of a tobacco product under Section 201(rr) of the FD&C Act. These deemed products include: e-cigarettes, pipe tobacco, cigars, hookah and oral nicotine products.
- On Dec 20, 2019, the President signed legislation raising the federal minimum age for sale of tobacco products from 18 to 21 years. This legislation (known as “Tobacco 21” or “T21”) became effective immediately, and it is now illegal for a retailer to sell any tobacco product to anyone under 21.
- On March 15, 2022, the President signed legislation to clarify that FDA’s tobacco product jurisdiction extends to tobacco products containing nicotine from any source, not just nicotine derived from tobacco. As such, retailers of tobacco products containing nicotine not made or derived from tobacco must ensure compliance with applicable requirements under the FD&C Act resulting from this law.

- FDA conducts these inspections to further CTP's mission to protect Americans from tobacco-related disease and death by regulating the manufacture, distribution, and marketing of tobacco products and by educating the public, especially young people, about tobacco products and the dangers their use poses to themselves and others.
- We hope retailers will partner with the FDA to help protect their communities by knowing the law and making use of tools to prevent underage sales.

# FOR FURTHER INFORMATION:

- Retail Sales of Tobacco Products  
<https://www.fda.gov/tobacco-products/compliance-enforcement-training/retail-sales-tobacco-products>
- Summary of the Federal Rules for Selling Tobacco Products  
<https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/selling-tobacco-products-retail-stores>
- Market and Distribute a Tobacco Product Summary  
<https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product>
- “This is Our Watch” Campaign for Retailers  
<https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/our-watch>
- What a Brick and Mortar Retailer Should Do After Receiving and Warning Letter – Webinar  
[https://www.youtube.com/watch?v=jv\\_NYEDEMPk](https://www.youtube.com/watch?v=jv_NYEDEMPk)
- Social Media Links (E.g.: Twitter, Facebook, YouTube)  
<https://www.fda.gov/tobacco-products/contact-ctp/connect-ctp>
- Sign up for CTP E-mail updates  
<https://www.fda.gov/tobacco-products/ctp-newsroom>



# WHAT IS THE BEST WAY TO CONTACT FDA WITH ADDITIONAL QUESTIONS?



For additional questions, you can contact FDA:

- CTP General E-mail: [AskCTP@fda.hhs.gov](mailto:AskCTP@fda.hhs.gov)
- Call: 1-877-287-1373 (9am EST-4pm EST)
- For Small Business Assistance E-mail: [SmallBiz.Tobacco@fda.hhs.gov](mailto:SmallBiz.Tobacco@fda.hhs.gov)