



**U.S. Department of Justice**

Office of Tribal Justice

Room 2318, RFK Main Justice Building  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

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January 22, 2015

Dear Tribal Leader:

In accordance with Executive Order 13175 and DOJ’s Consultation Policy, DOJ invites you to a consultation on proposed regulations that affect reservation-based cigarette and tobacco businesses. In 1978, the Contraband Cigarette Trafficking Act (CCTA), 18 U.S.C. 2341 *et seq*, was enacted to deter cigarette smuggling. The USA PATRIOT Improvement and Reauthorization Act of 2005 (PATRIOT Act), enacted on March 9, 2006, made several amendments to the CCTA. The DOJ Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for enforcing and administering both the CCTA and relevant amendments in the PATRIOT Act. In order to fulfill this responsibility and also ensure the rights of reservation-based cigarette and tobacco businesses, AFT has proposed further amendments to the PATRIOT Act.

The Department of Justice invites you to consult with ATF on these proposed amendments. The attached framing paper presents background on the aspects of the amendments that would affect American Indian and Alaska Native reservation-based businesses that sell cigarettes and smokeless tobacco to both tribal and non-tribal buyers. The schedule for the telephonic consultations is as follows:

<b>Tuesday, February 24, 2015 Consultation Session</b>	
3:00 – 4:00 p.m. Eastern	Link to register for the call and receive the call-in information: <a href="http://dpreregister.com/10059585">http://dpreregister.com/10059585</a>
<b>Wednesday, February 25, 2015 Consultation Session</b>	
3:00 – 4:00 p.m. Eastern	Link to register for the call and receive the call-in information: <a href="http://dpreregister.com/10059591">http://dpreregister.com/10059591</a>

Please note that you will be asked to provide your name and Tribal affiliation when you register. In addition, we will accept written comments until the close of business on Friday, March 13, 2015. Please submit them via email to [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov) or (if necessary) via regular mail to:

Office of Tribal Justice  
Department of Justice  
950 Pennsylvania Avenue NW, Room 2318  
Washington, DC 20530

If you have questions or have trouble using the links to register, please contact the Office of Tribal Justice at (202) 514-8812 (not a toll-free number) or [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov). We hope you will be able to participate in this important government-to-government consultation and look forward to working with you on this important issue.

Sincerely,



Tracy Toulou  
Director, Office of Tribal Justice  
U.S. Department of Justice

3:00 - 4:00 pm	Final registration for the call and receive the call-in information
4:00 - 4:30 pm	Call to register for the call and receive the call-in information
4:30 - 5:00 pm	Final registration for the call and receive the call-in information

Please note that you will be asked to provide your name and Tribal affiliation when you register. In addition, we will accept virtual comments until the close of business on Friday, March 13, 2015. Please contact us at (202) 514-8812 or [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov) if you have any questions.

## **TRIBAL CONSULTATION ON THE IMPLEMENTATION OF CERTAIN PROVISIONS OF THE USA PATRIOT ACT RELATING TO TRAFFICKING IN CONTRABAND CIGARETTES OR SMOKELESS TOBACCO**

The Department of Justice places a high priority on protecting the commercial rights of American Indians and Alaska Natives across all retail opportunities. The Department plans to consult with tribes to determine how proposed federal regulation might affect this effort, and provides this framing paper to initiate the consultation and frame resulting discussion. The framing paper presents background on the contraband tobacco issue, and then focuses on pending regulation that will affect American Indian and Alaska Native reservation-based businesses that sell cigarettes and smokeless tobacco to both tribal and non-tribal buyers.

Tribal recommendations in these areas, and others, are most welcome. This framing paper raises questions about options for tribal leaders to consider and is not a statement of Department policy.

### **BACKGROUND TO THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005 (PATRIOT ACT)**

The PATRIOT Act, enacted March 9, 2006, amended the Contraband Cigarette Trafficking Act (CCTA) by:

1. Reducing the threshold amount of cigarettes necessary to trigger jurisdiction under the CCTA from quantities in excess of 60,000 to quantities in excess of 10,000;
2. Extending the provisions of the CCTA to cover contraband smokeless tobacco;
3. Imposing reporting requirements on persons, except tribal governments, who sell more than 10,000 cigarettes, or 500 single-unit consumer-sized cans or the equivalent of smokeless tobacco in a single month;
4. Requiring that cigarettes and smokeless tobacco seized and forfeited under the CCTA either be used in law enforcement operations or destroyed; and
5. Authorizing State and local governments and Federal tobacco permittees to bring civil causes of action against CCTA violators.

Further, Section 121(c) of the PATRIOT Act amended the CCTA by:

1. Authorizing the Attorney General to prescribe regulations concerning additional recordkeeping requirements that he considers appropriate for purposes of enforcement of the CCTA on persons who ship, sell, or distribute more than 10,000 cigarettes or 500 single-unit consumer-sized cans or packages of smokeless tobacco in a single transaction.
2. Requiring persons, except for tribal governments, who engage in a delivery sale, and who ship, sell, or distribute more than 10,000 cigarettes or 500 single-unit consumer-sized cans or packages of smokeless tobacco within a single month, to submit to the Attorney General a report setting forth:
  - a. The person's beginning and ending inventories of cigarettes and cans or packages of smokeless tobacco (in total) for such month.
  - b. The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

- c. The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.
3. Adding the term “delivery sale,” which means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if:
  - a. The consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or
  - b. The cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

Section 121(e) of the PATRIOT Act amended the CCTA to make it clear that the CCTA is not intended to affect the concurrent jurisdiction of a State or local government to enact and enforce its own cigarette tax laws, to provide for the confiscation of cigarettes or smokeless tobacco and other property seized for violation of such laws, and to provide for penalties for the violation of such laws. This section also amended the CCTA to make it clear that the CCTA is not intended to inhibit or otherwise affect any coordinated law enforcement effort by a number of State or local governments, through interstate compact or otherwise, to provide for the administration of State or local cigarette tax laws, to provide for the confiscation of cigarettes or smokeless tobacco and other property seized in violation of such laws, and to establish cooperative programs for the administration of such laws.

## **BACKGROUND TO THE PROPOSED AMENDMENTS TO THE REGULATIONS TO IMPLEMENT THE PATRIOT ACT**

On July 28, 2010, the Department of Justice published in the **Federal Register** a notice of proposed rulemaking (NPRM) to implement certain provisions of section 121 of the PATRIOT Act (ATF 22P, 75 FR 44173), as summarized above. In addition, the NPRM stated that ATF was considering an amendment of the regulations in 27 CFR 646.150 concerning distributors’ retention of required records. In general, § 646.150 provides that each distributor of cigarettes shall retain the records required by §§ 646.146 and 646.147 for three years following the close of the year in which the records are made and shall keep the required records on the distributor’s business premises. The amendment would extend the record retention requirement to five years and harmonize the regulations with the applicable statute of limitations for CCTA violations, which is five years.

The Department welcomes feedback on the implementation of the PATRIOT Act through the above mentioned amendments to the regulations and, specifically, the following question:

Do the proposed amendments to the regulations impact tribal governments beyond the current statutory requirements?