



**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

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[www.atf.gov](http://www.atf.gov)

**OPEN LETTER TO ALL COMMON CARRIERS OR  
OTHER DELIVERY SERVICES WHO TRANSPORT AND DELIVER  
CIGARETTES OR SMOKELESS TOBACCO**

The purpose of this letter is to provide guidance on your obligations as a Tobacco Products Common Carrier or provider of Delivery Services. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is providing you with the following information to assist you in complying with the Prevent All Cigarette Trafficking Act of 2009 (PACT Act), Public Law 111-154, which principally modified the Jenkins Act 15 U.S.C. §375-378.

The PACT Act was passed based on Congress' recognition that the range in State cigarette and smokeless tobacco taxes creates a potential for interstate trafficking of these products to avoid State tax. Most of the provisions of the PACT Act become effective on June 29, 2010.

The PACT Act, codified at 15 U.S.C. § 375, revised several definitions, including the definition of "cigarette" which now incorporates roll-your-own tobacco and excludes cigars. A "Common Carrier" means any person (other than a local messenger service or the U.S. Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States. A "Delivery Sale" is defined to mean any sale of cigarettes or smokeless tobacco to a consumer if (A) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or (B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco. "Person" was redefined to include State, local, and Indian tribal governments. "Use" is redefined to include the consumption, storage, handling, or disposal of smokeless tobacco, in addition to cigarettes.

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco or advertises such in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a jurisdiction taxing the sale or use of cigarettes or smokeless tobacco, is required by the PACT Act to implement several procedural requirements. The following information is a summary of the PACT Act's basic requirements for interstate commerce involving cigarettes or smokeless tobacco into the following categories: Registration, Labeling Requirements, Delivery Requirements, Recordkeeping, List of Unregistered or Noncompliant Delivery Sellers,

Prohibition on Delivery, Limitations and Penalties, all of which may be applicable to your business operations.

### **Labeling Requirements**

Any shipping package containing cigarettes or smokeless tobacco and the associated bill of lading, if any, must include a clear and conspicuous statement on the outside of the shipping package, on the same surface as the delivery address, as follows: CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS.”

### **Delivery Requirements**

Common Carriers or other Delivery Services are required to have the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, sign to accept delivery of the shipping container at the delivery address; and obtain from the person who accepts delivery of the shipping container proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

### **Recordkeeping**

The PACT Act requires that a common carrier or other delivery service maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any delivery interrupted because the carrier or service determines or has reason to believe that the person ordering the delivery is in violation of the PACT Act; and provide that information, upon request, to ATF or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

### **List of Unregistered or Noncompliant Delivery Sellers**

The PACT Act, codified at 15 U.S.C. § 376a(e), directs the Attorney General of the United States to create and distribute a list of delivery sellers of cigarettes or smokeless tobacco that have not registered or that are otherwise not in compliance with the Act. This list will be provided to the attorney general and tax administrator of every State, common carriers and other persons that deliver small packages to consumers in interstate commerce, including the U.S. Postal Service, and any other person that can promote the effective enforcement of the PACT Act. The list will be updated and distributed at least once every 4 months.

To ensure that this list is accurate and complete, not later than 14 days before including a delivery seller on the list, the Attorney General will attempt to send a notice to delivery sellers stating that they have the opportunity to challenge being placed on the list. Such challenges will be investigated and results tendered not later than 30 days after the date on which the challenge is made.

### **Prohibition on Delivery**

Beginning 60 days after the date of the initial distribution or availability of the list described above, no person who delivers cigarettes or smokeless tobacco to consumers shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless:

- the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;
- the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or
- the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

### **Limitations**

Any common carrier or other person making a delivery subject to 15 U.S.C. § 376a(e)(9) shall not be required or otherwise obligated to:

- determine whether any list distributed or made available under paragraph (1) of § 376a(e) is complete, accurate, or up-to-date;
- determine whether a person ordering a delivery is in compliance with this Act; or
- open or inspect, pursuant to this Act, any package being delivered to determine its contents.

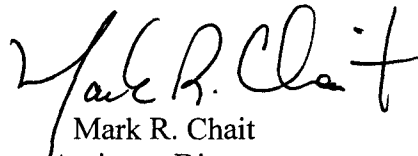
### **Penalties**

The PACT Act, codified at 15 U.S.C. § 377, includes criminal and civil penalties, with certain exceptions applicable mainly to delivery violations by common carriers or independent delivery services.

A copy of the PACT Act is available online at: <http://purl.access.gpo.gov/GPO/LPS122133> (PDF version) or <http://purl.access.gpo.gov/GPO/LPS122132> (Text version). If you need additional information regarding the newly enacted legislation, please contact Crisanto Perez, Jr., Chief, Alcohol and Tobacco Diversion Division at (202) 648-7236.

In addition, ATF does not have any jurisdiction over State laws. You should forward all inquiries as to State law to your State attorney general's office. They will be able to answer questions regarding cigarettes and smokeless tobacco laws in your State. A list of attorneys general office phone numbers can be found at <http://www.naag.com>.

ATF works closely with the industry and appreciates the important role you play in combating tobacco diversion.



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