



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

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**OPEN LETTER TO ALL STATE ATTORNEYS GENERAL AND
STATE TOBACCO TAX ADMINISTRATORS**

On March 31, 2010, the Prevent All Cigarette Trafficking Act (PACT Act) was signed into law. The purpose of this open letter is to provide you with information on amendments to the Jenkins Act, 15 U.S.C. §§375-378, which governs the collection of taxes on, and trafficking in, cigarettes and smokeless tobacco, and to explain the relationship between the attorney general and tax administrator of every State and the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") in complying with the requirements set forth in the PACT Act. Of specific note, the attorney general and tax administrator of every State, together with the ATF, have specified responsibilities that require independent action, coordination of efforts, and information sharing.

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. The Bureau of Alcohol, Tobacco, Firearms and Explosives has been delegated to act on behalf of the U.S. Attorney General in the administering and enforcement of the PACT Act. Most provisions of the PACT Act became effective on June 29, 2010.

The PACT Act, codified at 15 U.S.C. § 375, added or revised several definitions, including the definition of "cigarette," which now includes roll-your-own tobacco and excludes cigars. A "Common Carrier" means any person (other than a local messenger service or the United States 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 (1) 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 (2) 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" was 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. A summary of the PACT Act's basic

requirements for interstate commerce involving cigarettes or smokeless tobacco are discussed under the following categories, which may be applicable to tobacco business operations involving your State: **Registration, Reporting Requirements, Labeling Requirements, Delivery Requirements, Recordkeeping, List of Unregistered or Noncompliant Delivery Sellers, Prohibition on Delivery, Limitations and Penalties.**

Registration

Any person engaged in activities described above must register with ATF. The PACT Act also requires a separate registration with the tobacco tax administrators of the State and place into which such shipment is made or in which such advertisement or offer is disseminated. The law requires registration with both entities.

Reporting Requirements

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce must file, not later than the 10th day of each calendar month, a memorandum or a copy of the invoice covering each and every shipment made during the previous calendar month into such State. This reporting is done with the tobacco tax administrators of the States, not with ATF. Copies of the memorandum or invoice must also be filed with the chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.

State, local, or tribal governments are required to ATF a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

Labeling Requirements

For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing 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 (1) 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 Jenkins Act; and (2) 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, directs ATF to compile 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 Jenkins Act. State, local, or tribal governments shall report to ATF all known delivery sellers who have failed to register, failed to make reports as required by the Jenkins Act, or have been found in a legal proceeding to have otherwise failed to comply with Jenkins Act. This reporting by the State, local or tribal government must include supporting documentation. The list will be distributed to (1) the attorney general and tax administrator of every State; (2) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the USPS; and (3) any other person that can promote the effective enforcement of the Jenkins Act. The list will be updated and distributed at least once every 4 months.

To ensure that the list is accurate and complete, not later than 14 days before including a delivery seller on the list, ATF will attempt to send notice to such delivery seller advising the delivery seller that it is being placed on the list and providing the delivery seller the opportunity to challenge its placement on the list. Such challenges will be investigated by ATF and the results will be provided to the delivery seller not later than 30 days after the date on which the challenge is made.

Prohibition on Delivery

Commencing on the date that is 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.

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Limitations

Any common carrier or other person making a delivery pursuant 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)(1) is complete, accurate, or up-to-date;
- determine whether a person ordering a delivery is in compliance with the Jenkins Act; or
- open or inspect, pursuant to the Jenkins 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.

ATF continues to work closely with attorneys general and tax administrators of every State and appreciates the strong relationships in combating tobacco diversion.


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