

ATF Prevent All Cigarette Trafficking (PACT) Act Information Guide

The Attorney General has delegated the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to administer and enforce the PACT Act. ATF is providing this document on the PACT Act's 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. There are specified responsibilities that require independent action, coordination of efforts, and information sharing. This guide will:

1. Explain the relationship between State attorneys general/tax administrators and those who:
 - a. Sell, transfer, or ship for profit cigarettes/smokeless tobacco in interstate commerce; or
 - b. Advertise cigarettes/smokeless tobacco for sale, transfer or shipment;
2. Provide information to assist common carriers or provider's of delivery services; and
3. Help ATF comply with the requirements set forth in the PACT Act.

Definitions

Most provisions of the PACT Act became effective on June 29, 2010, and added or revised several definitions, including:

1. "Cigarette" now includes roll-your-own tobacco and excludes cigars.
2. "Common Carrier" means any person—other than a local messenger service or the United States Postal Service (USPS)—that holds itself out to the public as a provider for hire for the transportation of merchandise by water, land, or air. This applies whether or not the person actually operates the vessel, vehicle, or aircraft that provides the transportation between a port or place and a port or place in the U.S.
3. "Consumer" means any person that purchases cigarettes or smokeless tobacco; and does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.
4. "Delivery Sale" means any sale of cigarettes or smokeless tobacco to a consumer if:
 - a. The consumer submits the order for 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 otherwise not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.
5. "Delivery Seller" means a person who makes a delivery sale.

6. “Person” means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such a government, or joint stock company.
7. The term “interstate commerce” means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.
 - a. A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, shall be deemed to have been made if the sale into the State, place, or locality in which such cigarettes or smokeless tobacco is delivered.
8. “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
9. “Smokeless Tobacco” means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted
10. “Tobacco Tax Administrator” means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.
11. “Use” now includes the consumption, storage, handling, or disposal of smokeless tobacco in addition to cigarettes.

Registration

The PACT Act requires 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 State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco—or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment—must comply with certain procedural requirements:

Any person engaged in activities described above must register with ATF and 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. The person registering must provide the following information:

1. Individual’s full name.
2. Trade name (if any).
3. Address of any principal place of business and of any other place of business.
4. Telephone numbers for each place of business.

5. Principal e-mail address (if any).
6. Website addresses (if any).
7. Name, address, and telephone number of any agent in the State authorized to accept service on behalf of the person registering.

Pursuant to 15 U.S.C. §376, any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality or Native American country of a Native American tribe, must register with the Attorney General of the United States.

Foreign Manufacturers are not required to register pursuant to the PACT Act if they are:

- (1) Shipping tobacco product through customs to a bonded warehouse;
- (2) Not the importer or distributor;
- (3) Not offering product for sale; or
- (4) Not bringing product in interstate commerce for sale.

If a foreign manufacturer is both the importer and distributor and offers tobacco for sale in interstate commerce, then registration is required pursuant to the PACT Act.

ATF F 5070.1-<https://www.atf.gov/file/61471/download> ATF F. 5070.1a – <https://www.atf.gov/file/61476/download>. The form is not mandatory, but it can ensure successful completion of the Federal registration requirements listed above.

For ATF registration, submit the registration information via e-mail to PACTActregistrationinbox@atf.gov or via mail to:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Alcohol and Tobacco Enforcement Branch
99 New York Avenue, NE., Mailstop 6.N-509
Washington, D.C. 20226 USA

For State registration, submit the registration information in accordance with that State's established guidelines.

Reporting

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State... taxing the sale or use of cigarettes or smokeless tobacco or who advertises or offers cigarettes or smokeless tobacco for such sale, transfer, or shipment shall—

Not later than the 10th day of each calendar month file with the tobacco tax administrators of the State a memorandum or a copy of the invoice covering every shipment made during the previous calendar month into such State to 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 Native American tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.

Each memorandum or invoice must identify the following information:

1. The name and address of the person to whom the shipment was made;
2. The brand and the quantity delivered to the person in the specific shipment; and
3. The name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller.

The seller must organize all information relating to specific customers by city/town and by ZIP Code. The tobacco tax administrator or chief law enforcement officer will only use this information for purposes of the enforcement of the Jenkins Act and collection of any tobacco taxes owed.

State, local, or tribal governments must report to ATF all common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land. States shall also provide updates and corrections every 4 months until such time as the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list.

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—the following clear and conspicuous statement:

“CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS.”

Single sales or a single delivery of any cigarettes or smokeless tobacco is limited to 10 pounds or less and use of the USPS to mail most tobacco products is prohibited.

Delivery Requirements

Common carriers or other delivery services must have the purchaser placing the delivery sale order or another adult sign to accept delivery of the shipping container at the delivery address. They must also obtain proof from the person who accepts delivery of the shipping container—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. Delivery sellers shall not accept a delivery sale order from a person without:

1. Obtaining the full name, birth date, and residential address of that person; and
2. Verifying that information using a commercially available database or aggregate of databases regularly used by government and businesses for age and identity verification and authentication.

Recordkeeping

The PACT Act requires that a common carrier or other delivery service:

1. Maintain for 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.

Excise Tax

The PACT Act provides that a delivery seller may not sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender:

1. Any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;
2. Any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and
3. Any required stamps or other indicia indicating that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

The law provides an exception from these requirements specific to the delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with this requirement.

NOTE- The constitutionality of these provisions of the PACT Act has been challenged in the cases of *Red Earth v. United States*, 728 F.Supp. 2d 238 (W.D.N.Y 2011) affirmed in part 657 F.3d 138 (2d Cir. 2011) and *Gordon v. Holder*, 2011 U.S. Dist. LEXIS 139201 D. D.C (2011). The Red Earth Court has temporarily enjoined enforcement of the above referenced provisions of the PACT Act solely to members of the Seneca Free Trade Association while it decides whether these provisions comport with the Due Process Clause. The constitutionality of the PACT Act was confirmed in the case of *Musser's v. United States*, 2011 U.S. Dist. Lexis 109692 (E.D. Pa. 2011).

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 who have not registered or 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 otherwise fail to comply with the Jenkins Act. This reporting by the State, local or tribal government must include supporting documentation. ATF will update and distribute the list at least once every 4 months to:

1. The attorney general and tax administrators 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 who can promote the effective enforcement of the Jenkins Act.

To ensure that this list is accurate and complete, the ATF will attempt to send a notice to delivery sellers—no later than 14 days before including them on the list—stating that they have the opportunity to challenge their placement on the list. ATF will investigate such challenges and tender the results no later than 30 days after the date on which the challenge is made.

Prohibition on Delivery

Commencing 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:

1. The person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;
2. The delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or
3. The package 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. 15 U.S.C. 376(2)(A)(i-iii)

Limitations

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

1. Determine whether any list distributed or made available under paragraph (1) of §376a(e)(1) is complete, accurate, or up-to-date;

2. Determine whether a person ordering a delivery is in compliance with the Jenkins Act; or
3. Open or inspect, pursuant to the Jenkins Act, any delivery package to determine its contents.

Penalties

The PACT Act, codified at 15 U.S.C. § 377, includes criminal and civil penalties, with certain exceptions, mainly applicable to delivery violations by common carriers or independent delivery services. Violations of the Act by delivery sellers are subject to felony violations of the Jenkins Act and associated civil penalties. 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> (Test version).

For questions relating to State tobacco law requirements, please contact the applicable State attorney general's office.

For questions relating to PACT Act Federal requirements, please contact:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Alcohol and Tobacco Enforcement Branch
99 New York Avenue, N.E.
Washington, DC 20226
Telephone: (202) 648-7130
Fax: (202) 648-9725
E-mail: PACTActregistrationinbox@atf.gov