



U.S. Department of Justice

**Bureau of Alcohol, Tobacco,
Firearms and Explosives**

OCT 21 2010

Washington, DC 20226

www.atf.gov

**OPEN LETTER TO ALL PERSONS WHO SELL, TRANSFER, OR SHIP FOR PROFIT
CIGARETTES OR SMOKELESS TOBACCO IN INTERSTATE COMMERCE OR
WHO ADVERTISE CIGARETTES OR SMOKELESS TOBACCO FOR SUCH SALE,
TRANSFER, OR SHIPMENT**

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 guidance 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.

First, the definitions of several terms were revised, including "cigarette," "person," and "use." The term "cigarette" now includes roll-your-own tobacco and excludes cigars. The definition of the term "person" was expanded to include State, local, and Indian tribal governments. The term "use" was redefined to include the consumption, storage, handling, or disposal of smokeless tobacco, in addition to cigarettes. The PACT Act also added definitions for new terms. 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.

As amended, the Jenkins Act provides that 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 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 requirements relating to registration and reporting, as explained below. In addition, the PACT Act imposes other requirements involving cigarettes or smokeless tobacco. Those requirements, which may be applicable to your business operations, are addressed in the following categories: Registration, Reporting, Delivery Requirements, Recordkeeping, List of Unregistered or Noncompliant Delivery Sellers, Prohibition on Delivery, and Penalties.

Registration

Any person (including manufacturers, wholesalers, importers, and delivery sellers) engaged in activity described above must first file with the ATF of the United States and with the tobacco tax administrators of the State into which such shipment is made. The person registering must provide the following information:

- Individual's full name
- Trade name (if any)
- Address of principal place of business
- Address of any other places of business
- Telephone numbers for each place of business
- Principal electronic mail address (email)
- Website addresses (if any)
- Name, address, and telephone number of any agent in the State authorized to accept service on behalf of the person registering.

The effective date of this provision of the law was June 29, 2010. ATF has created a Pact Act Registration Form (ATF F 5070.1) that may be completed to satisfy the registration requirement. This form can be accessed on our website (<http://www.atf.gov/forms/alcohol-tobacco/>). The form is not mandatory, rather a recommended tool that can be used to ensure successful completion of the Federal registration information requirements listed above. The form may be submitted via email, PACTActregistrationinbox @atf.gov, or submitted via mail to:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Alcohol and Tobacco Diversion Division
99 New York Avenue, NE
Mailstop 7S-233
Washington, DC 20226 USA

Submission of this form to ATF does not fulfill the requirement to register with the tobacco tax administrators of the applicable States.

Reporting

In addition to registering with the ATF, not later than the 10th day of each calendar month, beginning July, 2010, each person engaged in activity described above must file, with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month into such State. The memorandum or invoice in each case must include the following information:

- The name and address of the person to whom the shipment was made;
- The brand and the quantity thereof; and

- The name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller.

All invoice or memoranda information relating to specific customers must be organized by city or town and by zip code.

This same information must also be reported to the tobacco tax administrators and 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.

This information will be used by the tobacco tax administrator or chief law enforcement officers only for purposes of the enforcement of the Jenkins Act and collection of any tobacco taxes owed.

Delivery Requirements

Delivery sellers are also required to comply with shipping requirements that specify that any shipping package containing cigarettes or smokeless tobacco and the associated bill of lading, if any, 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." Single sales or a single delivery of any cigarettes or smokeless tobacco is limited to 10 pounds or less and use of the U.S. Postal Service to mail most tobacco products is prohibited.

Delivery sellers who mail or ship tobacco products may not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery. In addition, delivery sellers are required to use a method of mailing or shipping that requires:

- 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), to sign to accept delivery of the shipping container at the delivery address; and
- The person who signs to accept delivery of the shipping container to provide 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.

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 through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and

businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser 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

Delivery sellers are required to maintain a record of any delivery sale of cigarettes and smokeless tobacco, including all of the information mentioned above under the heading "Reporting," organized by city or town and by zip code, into which the delivery sale is made. Records of a delivery sale must be kept until the end of the fourth full calendar year that begins after the date of the delivery sale.

Excise Tax

The law 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.

List of Unregistered or Noncompliant Delivery Sellers

The law directs the ATF to compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered, as described in the "Registration" section above, or that are otherwise not in compliance with the Jenkins Act. ATF shall include in this list noncomplying delivery sellers identified by any State, local, or tribal government. 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 Jenkins Act. The ATF will publicize the list and make it available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State. The list will be updated and distributed at least once every 4 months.

To ensure that the list is as accurate and complete as possible, the ATF will attempt to send a notice to delivery sellers stating that they have the opportunity to challenge being placed on the list. This notice will be sent no later than 14 days prior to placing a delivery seller on the list.

Challenges will be investigated 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

Beginning 60 days after the date of the initial distribution or availability of the list described above, no person who receives the list and 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.

Penalties

With certain exceptions applicable mainly to delivery violations by common carrier or an independent delivery service, violations of the Act by delivery sellers are subject to felony violations of the Jenkins Act and associated civil penalties.

To view a copy of the PACT Act legislation, go to <http://www.gpoaccess.gov/plaws/index.html>, and in the "Quick Search" box under "Current Congress Only," enter "public law 111-154" and click on "Submit." If you need any additional information regarding the newly enacted legislation, please contact ATF's Alcohol and Tobacco Diversion Division, Crisanto Perez, Jr., Division Chief, at (202) 648-7130.

Sincerely yours,


Mark R. Chait
Assistant Director
Field Operations