

ATF's Alcohol and Tobacco Diversion Division has created the following Frequently Asked Questions (FAQ) to provide information and guidance on the PACT Act. ATF will periodically update the FAQ with new questions and answers as they arise. Readers can submit additional questions to PACTActQuestions@ATF.GOV.

What is the PACT Act?

On June 29, 2010, the Prevent All Cigarette Trafficking Act (PACT Act) went into effect. The law amends the Jenkins Act, 15 U.S.C. Chapter 10A, which governs the collection of taxes on, and trafficking in, cigarettes and smokeless tobacco. The PACT Act revised definitions in the Jenkins Act, provided new requirements for registration, reporting, and recordkeeping, and increased penalties for criminal violations. The PACT Act also amends the Contraband Cigarette Trafficking Act, 18 U.S. C. Chapter 114, by providing ATF with additional inspection authority. The PACT Act generally bans the mailing of cigarettes: **this provision is enforced by the U.S. Postal Service**. The PACT Act also provides new delivery requirements and establishes a noncompliant delivery seller list, with prohibition on deliveries. The Act expands requirements for delivery (non-store/Internet/mail order) sales of cigarettes by requiring each delivery seller, with respect to delivery sales into a specific state and place, to (1) include on the bill of lading for the shipping package containing cigarettes or smokeless tobacco a clear and conspicuous statement that Federal law requires the payment of all applicable excise and sales taxes and compliance with applicable licensing and tax-stamping obligations; and (2) make records of all delivery sales accessible to the Attorney General.

The Act requires ATF to compile a list of noncompliant delivery sellers of cigarettes and smokeless tobacco and to distribute the list to State attorneys general, State tax administrators, common carriers and other couriers, including the U.S. Postal Service.

What tobacco products are covered under the PACT Act?

Cigarettes, roll-your-own tobacco, and smokeless tobacco are covered. Cigars are excluded.

What is a Delivery Sale?

Any sale of cigarettes or smokeless tobacco to a consumer if –

(A) the consumer orders by 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 products 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.

What is a common carrier?

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 (regardless of whether 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.

What is a consumer?

A consumer is any person who purchases cigarettes or smokeless tobacco. This does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

What is interstate commerce?

The term “interstate commerce” includes commerce between any place in a State and any place outside of that State, commerce between a State and Indian Country in the State, or commerce between points in the same State but through any place outside of the State or through any Indian Country. The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

Does selling and transporting tobacco from one Native American reservation or territory to another Native American reservation or territory qualify as interstate commerce?

Yes, even if the sale and transportation occurred within the same State.

Did ATF consult with the Native American community concerning the PACT Act?

Yes. ATF received comments from Tribal Governments and their representatives during a consultation process, including a consultation meeting held on June 8, 2010. ATF also received written comments in response to ATF’s open letters to tribal leaders. ATF’s response to these comments, “Implementation of the Prevent All Cigarette Trafficking Act of 2009 (PACT Act) – Tribal Consultation Process” is posted on the ATF website, <http://atf.gov/alcohol-tobacco/>.

Is ATF going to publish regulations regarding PACT Act?

At this time, no. ATF has deemed that the PACT Act is primarily self-executing and is providing information through open letters and this FAQ. However, ATF reserves the right to issue regulations and will invite comments through Tribal consultation prior to implementation as warranted.

Are the PACT Act and the Jenkins Act (as initially enacted and as amended by the PACT Act) applicable to Native Americans and do these laws purport to set forth legal requirements that infringe upon the inherent sovereignty of Native Americans and violate treaties between the Tribes and the United States?

It is ATF’s position that the Jenkins Act and the PACT Act apply equally to all persons, including Native Americans, absent a specific statutory exemption (which is not present in the PACT Act) or a treaty right. To the extent that any tax immunity issues (such as treaty rights, tax compact provisions, and common law principles) are raised as an affirmative defense to ATF’s enforcement of the PACT Act, ATF will consult with Department of Justice Officials to evaluate these issues as appropriate.

REGISTERING

Who has to register?

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 sale, transfer, or shipment.

Are Native American wholesalers, distributors and delivery sellers included in the persons required to register?

Yes.

Are international wholesalers, distributors, and delivery sellers required to register?

Yes, if they are transferring, selling, or shipping cigarettes or smokeless tobacco for profit in interstate commerce, or if they advertise that they do.

If a person ships into, or advertises in, several States, are they required to register in each of those States?

Yes. Any person who sells, transfers, or ships cigarettes or smokeless tobacco for profit in interstate commerce is required to register with every State into which they ship or advertise.

Does a Native American wholesaler, distributor, or delivery seller have to register if they are only transferring, selling, or shipping for profit cigarettes or smokeless tobacco to other Native American wholesalers, distributors or delivery sellers?

Yes.

Who do I register with?

Register with ATF (form available at <http://atf.gov/forms/alcohol-tobacco/>) 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.

What happens if I don't register?

Delivery sellers are placed on the PACT Act noncompliant list and may face criminal and civil penalties. (See the Noncompliant and Penalties section for more information.)

RECORD KEEPING

What records are delivery sellers required to keep?

Each delivery seller must keep a record of any delivery sale, including a copy of every invoice covering shipments of cigarettes or smokeless tobacco. The record must include the name and address of the person to whom the shipment was made; the brand and the quantity of tobacco delivered; and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller. The records must be organized by State and, within the State, by the city or town and by zip code into which the delivery sale was made.

How long do I have to retain my records?

Records of a delivery sale shall be kept until the end of the 4th full calendar year that begins after the date of the delivery sale.

Who can ask to see my records on delivery sales?

Delivery sales records shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of the local governments and Indian tribes, and to ATF (on behalf of the Attorney General of the United States).

REPORTING

Who has to report delivery sales to the States?

All delivery sellers of interstate shipments, including delivery sellers operating on Native American reservations, must report delivery sales.

What needs to be reported and when?

By the 10th of each calendar month, delivery sellers must file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice for every shipment of cigarettes or smokeless tobacco made during the previous calendar month into that State. Each memorandum or invoice must include the name and address of the person to whom the shipment was made; the brand and quantity of tobacco in the shipment; 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. Copies of the memorandum or invoice must be sent 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.

What happens if I don't submit the required invoices?

You are placed on the PACT Act noncompliant list and may face criminal and civil penalties. (See the Noncompliant and Penalties section for more information.)

Are Native American wholesalers, distributors, or delivery sellers required to report shipments of tobacco to the receiving State tax administrator if the receiving party is another Native American wholesaler, distributor, or delivery seller?

Yes.

Are international wholesalers, distributors, or delivery sellers required to report shipments of tobacco products?

Yes, if they are transferring, selling, or shipping cigarettes or smokeless tobacco in interstate commerce for profit, they need to meet the same monthly reporting requirements as domestic wholesalers, distributors, or delivery sellers.

DELIVERY OF CIGARETTES AND SMOKELESS TOBACCO

Can I mail cigarettes through the U.S. Postal Service?

See the U.S. Postal Service website for more information:

<http://www.usps.com/pactact/welcome.htm>

Can delivery sellers ship or deliver cigarettes or smokeless tobacco to a consumer if the applicable excise taxes have not been paid in the consumer's State prior to the delivery of cigarettes?

No delivery seller may 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 –

(A) 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;

(B) 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

(C) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

What markings must I place on packages for delivery sales?

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

Does the PACT Act apply to sales taxes?

No.

Is there a weight restriction for delivery sales?

A delivery seller shall not sell, offer for sale, deliver, or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.

Are there age restriction requirements for delivery sale shipments?

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, must sign to accept delivery of the shipping container at the delivery address; and the person who signs to accept delivery of the shipping container must 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. The delivery seller shall not accept a delivery sale order from a person without obtaining the full name, birth date, and residential address of that person; and verifying the 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.

PACT Act Noncompliant List

What can get a delivery seller placed on the noncompliant list?

- Failing to register with ATF or with the tobacco tax administrators of the State and place into which such shipment is made or in which an advertisement or offer is disseminated.
- Failing to properly report delivery sales to the tobacco tax administrator of the required States.
- Failing to properly mark cigarette or smokeless tobacco shipments to consumers.
- Failing to follow age verification restrictions and regulations.
- Failing to follow any other aspect of the PACT Act.

What does it mean if a delivery seller is on the noncompliant list?

No person who receives the noncompliant 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.

Who gets a copy of the noncompliant list?

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 ATF determines can promote the effective enforcement of the PACT Act.

Who can place delivery sellers on the noncompliant list?

ATF maintains the noncompliant list. ATF will place delivery sellers on the noncompliant list based on internal information and evidence provided by any State, local, or tribal government.

Will I be notified that I am being placed on the noncompliant list?

At least 14 days before including a delivery seller on the list, ATF will make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list, and cite the relevant provisions of this Act and the specific reasons for which the delivery seller is being placed on the list

Can I appeal my placement on the noncompliant list?

Delivery sellers may file a written challenge to their placement on the noncompliant list. Such challenges should explain why the delivery seller is in compliance with the PACT Act and/or why the delivery seller should not remain on the non-compliant list. The challenge should be mailed to:

ATF

99 New York Ave., NE

Mail Stop 7-S-233

Washington, DC 20226

ATTN: CHIEF ATDD

ATF will investigate each challenge by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made. If ATF determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, the delivery seller will be removed from the noncompliant list.

PENALTIES

What are the penalties for violating the PACT Act?

In general, whoever knowingly violates the PACT Act shall be imprisoned for not more than 3 years, fined under title 18, United States Code, or both.

Common carriers are prohibited from transporting cigarettes and smokeless tobacco for delivery sellers who are on the noncompliant list.

Common carriers or independent delivery services, or employees of common carriers or independent delivery services who knowingly violate the PACT Act are subject to criminal penalties

Violators of the PACT Act shall be subject to a civil penalty in an amount not to exceed –

(A) in the case of a delivery seller, the greater of –

(i) \$ 5,000 in the case of the first violation, or \$10,000 for any other violation; or

(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of the delivery seller during the 1-year period ending on the date of the violation.

(B) in the case of a common carrier or other delivery service, \$2,500 in the case of a first violation, or \$ 5,000 for any violation within 1 year of a prior violation.

A civil penalty may be imposed in addition to a criminal penalty and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

Can I be charged with other offenses in conjunction with PACT Act offenses?

Yes. Conduct which violates the PACT ACT may also constitute violations of other Federal or State criminal, civil, or tax laws.

Can I appeal any civil fines?

Yes. If a delivery seller or common carrier desires reconsideration after receipt of a notice of imposition of a civil fine, the delivery seller or common carrier must mail, within 15 days after receipt of the notice of imposition of a civil fine, a formal written request to:

**ATF
99 New York Ave., NE
Mail Stop 7-S-233
Washington, DC 20226
ATTN: CHIEF ATDD**

The request should include documentation detailing the factual basis for the reconsideration request. ATF will issue a written final decision within 30 days after receipt of the reconsideration request that includes a brief summary of the findings and conclusions on which the decision was based.