

Bulletin

Comptroller of Maryland • Field Enforcement Division • Motor-fuel, Alcohol and Tobacco Tax Regulatory Bureau
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TT-70

March 1, 2011

To: OUT-OF-STATE CIGARETTE MANUFACTURERS AND WHOLESALERS
OUT-OF-STATE “OTP” MANUFACTURERS AND WHOLESALERS

Subject: PREVENT ALL CIGARETTE TRAFFICKING ACT OF 2009 (“PACT Act”)

The PACT Act (Public Law 111-154) was signed by President Obama on March 31, 2010, most of the provisions became effective on June 29, 2010. This new federal law amends and expands the Jenkins Act (15 U.S.C. §§ 375 et seq.) by including “smokeless tobacco,” and by imposing a registration and reporting requirement on all persons who sell cigarettes or smokeless tobacco for profit in interstate commerce. Under the PACT Act, the definition of a cigarette includes “roll-your-own” (“RYO”) tobacco. Pipe tobacco and cigars are not subject to the PACT Act.

I. DELIVERY SALES

Under the PACT Act, a delivery sale is a sale of cigarettes or smokeless tobacco to a consumer if the:

- (1) Consumer submits the order for sale over the internet, by mail, or other electronic means;
- (2) Cigarettes or smokeless tobacco are delivered to a consumer by a common carrier, private delivery service, or other method of remote delivery; or
- (3) Seller is not otherwise in the physical presence of the consumer at the time of purchase or delivery.

II. DELIVERY SALES AND MARYLAND LAW

One purpose of the PACT Act is to prevent illegal sales of cigarettes and smokeless tobacco over the internet, by mail, or other electronic means to consumers. Under Business Regulation Article, § 16-223, Annotated Code of Maryland, it is and has been illegal to sell or ship cigarettes over the internet, by mail, or other electronic means to a Maryland consumer. On May 1, 2011, pursuant to Business Regulation Article, § 16.5-217, it will be illegal to sell or ship other tobacco products (“OTP”) over the internet, by mail, or other electronic means to a Maryland consumer. The PACT Act does not preempt or supersede Maryland state law prohibiting these delivery sales. Consumers in Maryland may obtain cigarettes and smokeless tobacco only from bricks-and-mortar Maryland cigarette or OTP licensed retailers.

Even though in Maryland, delivery sales of cigarettes are illegal and delivery sales of smokeless tobacco will be illegal on May 1, 2011, the registration and reporting requirements under the PACT Act apply to out-of-state cigarette and OTP manufacturers and wholesalers who sell or ship cigarettes or smokeless tobacco into Maryland.

Any person who sells or ships cigarettes or smokeless tobacco into Maryland must register with the Attorney General of the United States and with the Comptroller of Maryland. In addition, that person must submit a monthly report to the Comptroller for each shipment of cigarettes or smokeless tobacco sold or shipped for profit into Maryland.

III. REGISTRATION AND REPORTING REQUIREMENTS

As the state tobacco tax administrator, the Comptroller will administer the following two requirements under the Jenkins Act (15 U.S.C. § 376) as amended by the PACT Act:

A. Registration

The United States Attorney General has delegated the duties of administration and enforcement of the PACT Act to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). The PACT Act Registration form that must be filed with the U.S. Department of Justice is available at: <http://www.atf.gov/alcohol-tobacco>.

A copy of the PACT Act registration filed with ATF must be filed with the Comptroller of Maryland at the same address or email as indicated below.

B. Reporting

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco into Maryland must file a report no later than the 10th day of each calendar month following the month in which cigarettes and smokeless tobacco were sold or shipped. For example, if you sold or shipped cigarettes or smokeless tobacco into Maryland during the month of July 2010, the report was due to the Comptroller on August 10, 2010 for the month of July.

The monthly report consists of a memorandum or copy of the invoice for each and every shipment of cigarettes or smokeless tobacco, and must include the following information:

- (1) Name and address of the person to whom the shipment was made;
- (2) Name of brand; and
- (3) Quantity shipped.

The report due on April 10, 2011 should be sent to the Revenue Administration Division at the address below.

The registration and monthly reports should be sent by U.S. mail or e-mail to:

Jane Y. Reger, Assistant Director
Comptroller of Maryland
Revenue Administration Division
P.O. Box 1829
Annapolis, Maryland 21404-1829
jreger@comp.state.md.us

IV. ENFORCEMENT

The United States Attorney General is charged with enforcing the PACT Act. Maryland, through its Attorney General, may also take legal action to enforce the PACT Act. Violations may be subject to civil and criminal penalties.

Questions about this bulletin should be directed to Ms. Jane Reger at 410-260-7451.

Jeffrey A. Kelly
Director