

# **The Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008**

UNION OF INDIA

India

## **The Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008**

### **Rule**

### **THE-PAN-MASALA-PACKING-MACHINES-CAPACITY-DETERMINATION of 2008**

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The Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 Published vide Notification No. G.S.R. 491(E), dated 1st July, 2008, No. 30/2008-Central Excise (N.T.)G.S.R. 491(E). - In exercise or the powers conferred by Sub-sections (2) and (3) of section 3A of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules, namely :-

#### **1. Short title and commencement.**

(1) These rules may be called the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. (2) They shall come into force on the 1st day of July, 2008.

#### **2. Definitions.**

- In these rules, unless the context otherwise requires, -(a) "Act" means the Central Excise Act, 1944 (1 of 1944); (b) "notified goods" means goods specified by the Central Government by notification under sub-section (1) of section 3A of the Act; (c) "packing machine" includes all types of Form, fill and Seal (FFS) Machines and Profile Pouch Making Machines, by whatever name called, whether vertical or horizontal, with or without collar, single track or multi-track, and any other type of packing machine used for packing of pouches of notified goods; (d) "pan masala" means excisable goods falling under tariff item 21069020 of the First Schedule to the Tariff Act; (e) "pan masala containing tobacco" means excisable goods defined in Note-4 of Chapter 24 of the First Schedule to the Tariff Act and falling under tariff item 2403 99 90 of the same Schedule; (f) "retail sale price"

means retail sale price as specified by the Central Government, in Explanation 3 to the opening paragraph in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 42/2008-CE, dated the 1st July, 2008;(g)"Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);(h)the words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

### 3. Application.

- These rules shall apply to pan masala and pan masala containing tobacco, commonly known as gutkha, notified under sub-section (1) of section 3A of the Act by the notification of the Government of India in the Ministry of Finance (Department at Revenue), No. 29/2008-CE (N.T.), dated the 1st July, 2008.[4. Factor relevant to production. - The factors relevant to the production of notified goods shall be the number of packing machines in the factory of the manufacturer and the maximum packing speed at which such packing machines can be operated for packing of notified goods of various retail sale prices.] [Substituted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)]

### 5. Quantity deemed to be produced.

- [The quantity of notified goods, having retail sale price as specified in column (2) of the Table below, deemed to be produced by use of one operating packing machine, having maximum column (4) or column (5) of the Table below, as the case may be, per month shall be as is equal to the corresponding entry specified in column (3) or column (4) or column (5) of the said Table, as the case may be;] [Substituted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)][Table] [Substituted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)]

Sl. No.	Retail sale price (per pouch)	Number of pouches per operating packing machine per month		
		Upto 300 pouches per minute	301 to 750 pouches per minute	751 pouches per minute and above
(1)	(2)	(3)	(4)	(5)
1	Up to Rs. 1.00	6864000	11232000	24960000
2	From Rs. 1.01 to Rs. 1.50	6864000	11232000	24960000
3	From Rs. 1.51 to Rs. 2.00	6520800	10670400	23712000
4	From Rs. 2.01 to Rs. 3.00	6520800	10670400	23712000
5	From Rs. 3.01 to Rs. 4.00	6314880	10333440	22963200

6	From Rs. 4.01 to Rs. 5.00	6314880	10333440	22963200
7	From Rs. 5.01 to Rs. 6.00	6314880	10333440	22963200
8	Above Rs. 6.00	6177600	10108800	22464000

Explanation. - For the purposes of this rule, if there are multiple track or multiple line packing machine which besides packing the notified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc., two such tracks or lines shall be deemed to be one individual packing machine for the purposes of calculation of the number of pouches per operating packing machine per month.

## 6. Declaration to be filed by the manufacturer.

(1)A manufacturer of notified goods shall, immediately on coming into force of these rules, and, in any case, not later than ten days, declare, in Form 1,-(i)the number of single track packing machines available in his factory;(ii)the number of packing machines out of (i), which are installed in his factory;(iii)the number of packing machines out of (ii), which he intends to operate in his factory for production of notified goods;(iv)the number of multiple track or multiple line packing machine, which besides packing the notified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc;(v)the number of multiple track or multiple line packing machines out of (iv), which are installed in his factory;(vi)the number of multiple track or multiple line packing machines out of (v), which he intends to operate in his factory for production of notified goods;(vii)the name of the manufacturer of each of the packing machine, its identification number, date of its purchase and the maximum packing speed at which they can be operated for packing of notified goods of various retail sale prices;(viii)description of goods to be manufactured including whether pan masala or gutkha or both are to be manufactured, their brand names, etc;(ix)retail sale prices of the pouches to be manufactured during the financial year;(x)the plan and details of the part or section of the factory premises intended to be used by him for manufacture of notified goods of different retail sale prices and the number [and details as per clause (vii)] [Inserted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)] of machines intended to be used by him in each of such part or section, to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise:Provided that a new manufacturer shall file such declaration at least fifteen days prior to the commencement of commercial production of notified goods in his factory.(2)On receipt of the declaration referred to in sub-rule (1), the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, shall, after making such inquiry as may be necessary including physical verification, approve the declaration [including that of the maximum packing speed at which each of the packing machines available in his factory can be operated for packing of notified goods of various retail sale prices] [Inserted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)] and determine and pass order concerning the annual capacity of production of the factory within five working days in accordance with the provisions of these

rules: Provided that the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, may direct for modifications in the plan or details of the part or section of the factory premises intended to be used by the manufacturer for manufacture of notified goods of different retail sale prices, as he thinks proper, for effective segregation of the parts or sections of the premises and the machines to be used in such parts or sections before granting the approval: Provided further that if the manufacturer does not receive the approval in respect of his declaration within the said period of five working days, the approval shall be deemed to have been granted subject to the modifications, if any, which the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, may communicate later on but not later than thirty days of filing of the declaration. (3) The annual capacity of production shall be calculated by application of the appropriate quantity that is deemed to be produced by use of one operating packing machine as specified in rule 5 to the number of operating packing machines in the factory during the month beginning which the capacity is being determined. (4) The number of operating packing machines during any month shall be equal to the number of packing machines installed in the factory during that month. (5) The machines which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision: Provided that in case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated. (6) In case a manufacturer wishes to make any subsequent changes with respect to any of the parameters which has been declared by him and approved by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in terms of sub-rule (2), such as changes relating to addition or removal of packing machines in the factory or making alterations in any part or section of the approved premises or in the number of machines to be used in such part or section or commencing manufacture of goods of a new retail sale price or discontinuation of manufacturing of goods of existing retail sale price [or in case of commencement of manufacture of goods of a new retail sale price, the maximum packing speed at which the packing machines can be operated for packing of goods of such new retail sale price] [Inserted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)], etc., he shall file a fresh declaration to this effect at least fifteen days in advance to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, who shall approve such fresh declaration and re-determine the annual capacity of production following the procedure specified in sub-rule (2).

## **7. Duty payable to be calculated.**

- The duty payable for a particular month shall be calculated by application of the appropriate rate of duty specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.42/2008-CE, dated the 1st July, 2008 to the number of operating packing machines in the factory during the month.

## **8. Alteration in number of operating packing machines.**

- In case of addition or installation or removal or uninstallation of a packing machine in the factory during the month, the number of operating packing machine for the month shall be taken as the

maximum number of packing machines installed on any day during the month: Provided that in case a manufacturer commences manufacturing of goods of a new retail sale price during the month on an existing machine, it shall be deemed to be an addition in the number of operating packing machine for the month: Provided further that in case of non-working of any installed packing machine during the month, for any reason whatsoever, the same shall be deemed to be operating packing machine for the month.

## **9. Manner of payment of duty and interest.**

- The monthly duty payable on notified goods shall be paid by the 5th day of same month and an intimation in Form-2 shall be filed with the jurisdictional Superintendent of Central Excise before the 10th day of the same month: Provided that monthly duty payable for the month of July, 2008 shall be paid on or before 15th day of July, 2008: [Provided further that monthly duty payable for the month of March, 2015 shall be paid on or before the 15th day of March, 2015:] [Inserted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)] [Provided also] [Substituted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)] that if the manufacturer fails to pay the amount by due date, he shall be liable to pay the outstanding amount along with the interest at the rate specified by the Central Government vide/notification under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount: Provided also that in case of increase in the number of operating packing machines in the factory during the month on account of addition or installation of packing machines, the differential duty amount, if any, shall be paid by the 5th day of the following month: Provided also that in case a manufacturer permanently discontinues manufacturing of goods of existing retail sale price or commences manufacturing of goods of a new retail sale price during the month, the monthly duty payable shall be recalculated pro-rata on the basis of the total number of days in that month and the number of days remaining in that month counting from the date of such discontinuation or commencement and the duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day, of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month: Provided also that if there is revision in the rate of duty, the monthly duty payable shall be recalculated pro-rata on the basis of the total number of days in that month and the number of days remaining in that month counting from the date of such revision and the duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month: Provided also that in case it is found that manufacturer has manufactured goods of those retail sale prices, which have not been declared by him in accordance with provisions of these rules or has manufactured goods in contravention of his declaration regarding the plan or details of the part or section of the factory premise intended to be used by him for manufacture of notified goods of different retail sale prices and the number of machines intended to be used by him in each of such part or section, the rate of duty applicable to goods of highest retail sale price so manufactured by him shall be payable in respect of all the packing machines operated by him for the period during which such manufacturing took place: Provided also that in case a manufacturer does not pay the duty payable, and continues to operate any packing machine, he shall be liable to pay the

duty for the remaining months of the financial year based on the number of operating packing machines declared in the month for which duty was last paid by him or the total number of packing machines found available in his premises at any time thereafter, whatever is higher.

## **10. Abatement in case of non-production of goods.**

- In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be with a copy to the Superintendent of Central Excise, at least seven days prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that these cannot be operated during the said period: Provided that during such period, no manufacturing activity, whatsoever, in respect of notified goods shall be undertaken and no removal of goods shall be effected by the manufacturer: Provided further that when the manufacturer intends to restart his production of notified goods, he shall inform to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, of the date from which he would restart production, whereupon the seal fixed on packing machines would be opened under the physical supervision of Superintendent of Central Excise.

## **11. Retail sale price to be declared on the package.**

- Every manufacturer shall declare the retail sale price of the notified goods on the package of such goods: Provided that if the manufacturer falls to declare the retail sale price before removing the goods from the place of manufacture or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of these rules or tampers with or obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture, then such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the manner specified in these rules and such price shall be deemed to be the retail sale price for the purposes of these rules.

## **12. Determination of retail sale price in case of non-declaration, obliteration, tampering, etc.**

- Where a manufacturer removes the notified goods in the manner and circumstances specified in proviso to rule 11, then, the retail sale price of such goods shall be ascertained by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in the following manner, namely :- (i) If the manufacturer has manufactured and removed identical goods, within a period of one month, before or after removal of such goods, by declaring the retail sale price, then, the said declared retail sale price shall be taken as the retail sale price of such goods. (ii) If the retail sale price cannot be ascertained in terms of (i), the retail sale price of such goods shall be ascertained by conducting the enquiries in the retail market where such goods have

normally been sold at or about the same time of the removal of such goods from the place of manufacture: Provided that if more than one retail sale price is ascertained under (i) or (ii), then, the highest of the retail sale price, so ascertained, shall be taken as the retail sale price of all such goods. Explanation. - For the purposes of this rule, when retail sale price is required to be ascertained based on market inquiries, the said inquiries shall be carried out on sample basis. (iii) Where a manufacturer alters or tampers the retail sale price declared on the package of goods after their removal from the place of manufacture, resulting into increase in the retail sale price, then such increased retail sale price shall be taken as the retail sale price of all goods removed during a period of one month before and after the date of removal of such goods: Provided that where the manufacturer alters or tampers the declared retail sale price resulting into more than one retail sale price available on such goods, then, the highest of such retail sale price shall be taken as the retail sale price of all such goods. (iv) If the retail sale price of goods cannot be ascertained under (i) to (iii), the retail sale price shall be ascertained in accordance with the principles of this rule.

### **13. Addition or removal of packing machines and other restrictions.**

(1) In case a manufacturer does not intend to further operate a packing machine, he shall intimate the same to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, at least seven days in advance, whereupon the same shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision: Provided that in case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated. (2) In case a manufacturer wants to add or install a packing machine in his premises, he shall give a notice to this effect at least seven days in advance to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, who shall allow the addition or installation, as the case may be, under the physical supervision of Superintendent of Central Excise. (3) No manufacturer shall be allowed to keep in his factory any stock of packing material for goods of those retail sale prices which have not been declared by him in accordance with provisions of these rules. (4) No manufacturer shall be allowed to trade in notified goods of retail sale prices not declared by him in accordance with provisions of these rules, from his factory premises. (5) In case a manufacturer permanently discontinues manufacture of goods of existing retail sale prices, he shall declare the balance stock of notified goods of existing retail sale prices and their packing material on the day he discontinues manufacturing of goods of existing retail sale prices.

### **14. Rebate of duty.**

- Except in accordance with such terms and conditions as the Central Government may by notification specify in this behalf, no rebate of excise duty shall be granted under rule 18 of the Central Excise Rules, 2002, in respect of notified goods on which duty has been paid under notification of the Government of India in the Ministry of Finance (Department of Revenue), No.42/2008-CE, dated the 1st July, 2008 and exported out of India.

## **15. Cenvat credit not admissible.**

- Notwithstanding anything contained in these rules, no CENVAT credit of duty paid on any input, capital goods or input services used for manufacture of the notified goods shall be taken under the CENVAT Credit Rules, 2004 and the full amount of duty payable would be paid in cash only.

## **16. Factories ceasing to work.**

- Notwithstanding anything contained in these rules, where a manufacturer ceases to work in respect of all the machines installed in the factory and who has filed an intimation with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, for this purpose, the duty payable by him for the month shall be calculated pro rata on the basis of the total number of days in the said month and total number of days before the date of receipt of said intimation with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, and the duty paid for the month in accordance with the notification shall be adjusted towards the duty so calculated and on such adjustment, if there is any excess payment it shall be refunded to the manufacturer by the 20th day of the following month and deficiency, if any, shall be payable by him by the 5th day of the following month. Explanation. - For the purposes of this rule, a manufacturer, who cease to operate his factory for one or two shifts only, shall not be deemed to have ceased to work.

## **17. Penalty for contraventions, etc.**

(1) Subject to the provisions of section 11AC of the Act, if any manufacturer produces or removes notified goods in contravention of any provision of these rules, then all such goods shall be liable to confiscation, and the manufacturer shall be liable to a penalty not exceeding the duty leviable on the notified goods in respect of which aforesaid contravention has been committed. [Provided that in case of contraventions involving non-declaration of number of packing machines shall be determined on the basis of total number of undeclared packing machines shall be determined on the basis of total number of undeclared packing machines found available in the premises, the highest retail sale price of the pouches manufactured with the aid of such packing machines and the rate of duty per packing machine corresponding to the higher maximum packing speed specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue No. 42/2008-CE dated the 1st July, 2008) [Inserted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)] (2) If it is found that goods have been cleared from it unit which is not registered with the jurisdictional Central Excise Office, then its duty liability for the period till it was not registered, shall be determined as if the goods manufactured by the unit were not eligible for levy and assessment under notification of the Government of India in the Ministry of Finance (Department of Revenue), No.29/2008-CB (N.T.), dated the 1st July, 2008 and dealt with accordingly.



## **18. Provisions to apply mutatis mutandis.**

- Except as herein provided, all provisions of the Act and the Central Excise Rules, 2002, including those relating to maintenance of daily stock account, removal of goods on invoice, filing of returns and recovery of dues shall apply mutatis mutandis. Explanation. - Unless otherwise specified in these rules, for the purposes of these rules, the goods shall be deemed to have been manufactured or produced with the aid of a packing machine, if they are cleared from a factory where a packing machine is installed, irrespective of whether it is in use or not, or is in working condition or not. Form-1[See rule 6]

**1. Name of the manufacturer:**

**2. Address of the manufacturing premise:**

**3. ECC No:**

**4. Address of other premises manufacturing the same products:**

**5. Number of single track packing machines available in the factory:**

**6. Number of packing machines out of (5), which are installed in the factory:**

**7. Number of packing machines out of (6), which the manufacturer intends to operate in his factory for production of notified goods:**

**8. Number of multiple track or multiple line packing machine, which besides packing the notified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc.:**

**9. Number of multiple track or multiple line packing machines out of (8), which are installed in the factory:**

**10. Number of multiple track or multiple line packing machines out of (9), which the manufacturer intends to operate in his factory for production of notified goods:**

**11. Name of the manufacturer of each of the packing machine, its identification number, date of its purchase and the maximum packing speed at which the machines can be operated for packing of notified goods of**

**various retail sale prices:**

**12. Description of goods to be manufactured including whether pan masala or gutkha or both are to be manufactured, their brand names, etc :**

**13. Retail sale prices of the pouches to be manufactured during the financial year:**

**14. The ground plan and details of the part or section of the factory premises intended to be used by him for manufacture of notified goods of different retail sale prices and the number [and details as per entry (11)] [Inserted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)] of machines intended to be used by him in each of such part or section:**

**15. Declaration :**

(a)I/We further declare that the particulars furnished above are true and correct in all respects. In case any particulars are found to be untrue/incorrect. I/We undertake to pay any additional amount of excise duty on pan masala and pan masala containing tobacco manufactured by me/us as per provisions of the Central Excise Act, 1944 (1 of 1944) or the rules or notifications issued thereunder.(b)I/We further undertake that any addition or removal of the packing, machine would be done under the physical supervision of the Central Excise Officer as per the procedure provided in the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.(c)I/We hereby agree to abide by the provisions and conditions of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.Place:Date :Name, residential address andsignature of manufacture/authorized agent.Form-2[See rule 9]

**1. Name of the manufacturer:**

**2. Address of the manufacturing premise:**

**3. ECC No.:**

**4. I/We hereby confirm that we have paid a sum of Rs....., towards the duty liability for the month of ..... as per \*particulars given below:**

(\* Particulars in the given format may be given separately for each MRP)(i)Retail sale price of the pouches manufactured during the month(ii)No. of packing machines installed and operated in the factory for each RSP [and the maximum packing speed at which such packing machines can be operated for packing of notified goods of that retail sale price.] [Inserted by Notification No. G.S.R. 150(E), dated 1.3.2015 (w.e.f. 1.7.2008)](iii)Duty payment particulars

Date of payment Name and address of the Bank and branch Amount of duty paid (Rs.)

(iv)[ Break-up of duty payment for apportionment between various duties is as per details below:-  
[Substituted by Notification No. G.S.R. 240(E), dated 1.3.2016 (w.e.f. 1.7.2008)]

Sl. No.	Duty	Duty ratio for pan masala	Duty paid(in rupees)	Duty ratio for pan masala containing tobacco	Duty paid(in rupees)
(1)	(2)	(3)	(4)	(5)	(6)
1	The duty leviable under the Central Excise Act, 1944 (1 of 1944)	0.3958		0.8350	
2	The additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005)	0.1250		0.0619	
3	National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001)	0.4792		0.1031	
4	Education Cess leviable under section 91 of the Finance Act, 2004 (23 of 2004)	0.0		0.0	
5	Secondary and Higher Education Cess leviable under section 136 of the Finance Act, 2007 (22 of 2007)	0.0		0.0	

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## 5. Copies of Bank challans are enclosed as per following detail:

Place:Date:Name, residential address and signature of manufacture/authority agent