

Management Instruction

Responding to Matter Nonmailable Under The PACT Act and POSECCA


This management instruction (MI) provides guidance for field personnel about matter made nonmailable under the Prevent All Cigarette Trafficking Act (PACT Act) and the Preventing Online Sales of E-Cigarettes to Children Act (POSECCA).

Background

Under the PACT Act and POSECCA, the following matter is generally nonmailable, except in limited circumstances. Cigars are not subject to the PACT Act or POSECCA.

- **Cigarettes**, meaning any of the following:
 - Rolls of tobacco wrapped in paper or in any substance not containing tobacco.
 - Rolls of tobacco wrapped in a tobacco-containing substance but likely to be offered to, or purchased by, consumers as a cigarette.
 - Roll-your-own tobacco (tobacco or wrappers offered to, or purchased by, consumers for making cigarettes or cigars).
- **Smokeless tobacco**, meaning any of the following:
 - Tobacco intended to be placed in the oral or nasal cavity.
 - Tobacco otherwise consumed without being combusted.
- **Electronic nicotine delivery systems (ENDS)**, meaning any of the following:
 - Electronic devices that, through an aerosolized solution, deliver nicotine, flavor, or any other substance to the user inhaling from the device.
 - Any component, liquid, part, or accessory of an ENDS device, regardless of whether it is sold or provided separately from the device.

Examples of ENDS devices include e-cigarettes, e-hookahs, e-cigars, e-pipes, vape pens, or advanced refillable personal vaporizers. Despite the name, ENDS are nonmailable regardless of whether they contain nicotine or are used with nicotine.

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The exceptions under which cigarettes, smokeless tobacco, or ENDS may be mailed are as follows:

- a. **Intra-Alaska/Intra-Hawaii:** Shipments made entirely within Alaska or Hawaii.
- b. **Business/Regulatory Purposes:** Shipments transmitted between authorized businesses for business purposes, or between authorized businesses and government agencies for regulatory purposes. This exception requires pre-authorization of the sender and recipient by the Pricing and Classification Service Center (PCSC).
- c. **Certain Individuals:** Infrequent, lightweight shipments mailed by adult individuals.
- d. **Consumer Testing/Public Health (cigarettes only):** Cigarettes sent by authorized manufacturers to adults for consumer testing purposes, and shipments sent by authorized federal agencies to consumers for public health purposes. This exception requires pre-authorization of the sender by the PCSC.

Packages eligible for mailing under these exceptions are required to meet certain conditions, including bearing markings identifying the applicable exception. For detailed information, see Publication 52, *Hazardous, Restricted, and Perishable Mail*, and Field Information Kit: PACT Act ENDS Products (see the Retail/Post Office Operations and Delivery Blue webpages for detailed information).

The following packages are **ineligible for any exception**, regardless of markings or other indications:

- a. Mail accepted by a Postal Service™ carrier, contractor, or through any third-party acceptance method. Prohibited acceptance methods and locations for cigarettes, smokeless tobacco, and ENDS include Pickup on Demand, Package Pickup, customer mailboxes or collection boxes, a Community Post Office™, a Contract Postal Unit, a Village Post Office™, an Approved Shipper, and any other contractor- or third-party-operated acceptance location.
- b. Inbound international mail.
- c. Outbound international mail.
- d. Diplomatic mail.
- e. Military mail.
- f. Mail to, from, or between the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau (ZIP Codes 96939-96944, 96960, or 96970).

Scope

This guidance applies to any package that the Postal Service knows, or has reasonable cause to believe, contains cigarettes, smokeless tobacco, or ENDS **to which an exception does not apply** (i.e., matter nonmailable under the PACT Act and POSECCA). Determining whether

an exception applies requires review of several factors, including the following:

- a. Markings on the package.
- b. Location of the sender and addressee.
- c. PCSC authorization letter presented by the sender.
- d. Lists of authorized shippers and recipients.
- e. Postal Service products selected by the sender.
- f. Weight of the package.
- g. Verification of the sender's or recipient's identity and age.
- h. Verification of the recipient's employment.
- i. Use of Adult Signature and, in some cases, Return Receipt service.

Which factors might apply will depend on the circumstances. For detailed information, see Publication 52 and Field Information Kit: PACT Act ENDS Products.

Reasonable cause may be based on the following:

- a. Certain factors evaluated by Inspection Service personnel (including advertisements and a list of unregistered or noncompliant delivery sellers compiled by the Bureau of Alcohol, Tobacco, Firearms, and Explosives).
- b. Other relevant circumstances that reasonably indicate the likely presence of cigarettes, smokeless tobacco, or ENDS. These circumstances are further elaborated below.

Instructions for Acceptance Personnel

Postal Service employees must refuse acceptance of a package to which any of the following circumstances apply and **to which an exception does not apply**:

- a. Cigarettes, smokeless tobacco, or ENDS are in plain sight inside a mailing container (e.g., because the packaging is transparent or bursts during normal operations).
- b. A Postal Service employee observes cigarettes, smokeless tobacco, or ENDS being packed into a mailing container.
- c. The mailer admits the package contains cigarettes, smokeless tobacco, or ENDS.
- d. There is a known violation of mailing rules (e.g., retail personnel notice that an individual is sending more than 10 separate mailings in a 30-day period).
- e. The exterior markings on the mailing container make it evident that the package contains cigarettes, smokeless tobacco, or ENDS.
- f. The package is from a non-compliant shipper, as identified in a notification from the Inspection Service to your office, and acceptance personnel have followed all instructions provided by the Inspection Service.

Instructions for Mail Processing and Delivery Personnel

Collection: Postal Service employees must refuse collection of or return any mail that is presented for carrier collection and that appears to contain cigarettes, smokeless tobacco, or ENDS—even if it is marked to indicate that an exception applies. Examples of prohibited collection methods are listed under Background in this MI.

Domestic (except as noted below): Postal Service employees must return, refer to the Inspection Service, or treat as dead mail, as applicable under *Postal Operations Manual* (POM) part 139 or subchapter 69, any domestic mail matter that, once entered into the mailstream, is found to contain cigarettes, smokeless tobacco, or ENDS **to which an exception does not apply** or that fails to meet all of the conditions for an exception for which it initially appears to qualify.

For example, consider a situation where a package bursts open during normal operations and nonmailable matter is observed. Operations personnel may be required to contact the Inspection Service pursuant to POM 139.117 for verification and a determination as to hazardous materials and/or controlled substances.

Where a package contains nonmailable matter other than hazardous materials and/or controlled substances, operations personnel must return the package with a report to the PCSC as directed by POM 139.118.

International and other restricted flows: With respect to the restricted flows listed below, Postal Service employees must transfer to the Inspection Service's International Mail Security unit at the nearest International Service Center any mail matter with any of the following characteristics:

- a. Bearing a customs declaration or other indication that the package contains cigarettes, smokeless tobacco, or ENDS. Such identification may be made on the basis of foreign-language descriptors if the employee is a speaker of that language or is otherwise familiar with the relevant terminology.
- b. Displaying certain characteristics identified by the Inspection Service or in-plant support, such as (b) (7)(E)
- c. Containing cigarettes, smokeless tobacco, or ENDS (e.g., where a package bursts during normal operations and nonmailable matter is observed).

The mail flows to which this instruction applies are as follows:

- a. Inbound or outbound international mail.
- b. Mail to or from APO/FPO/DPO addresses.
- c. Mail to or from any address in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau (ZIP Codes 96939-96944, 96960, or 96970).

Actions Not Authorized: Processing and delivery personnel are not authorized to do any of the following:

- a. Investigate advertising or other public statements to determine whether a mailer is sending cigarettes, smokeless tobacco, or ENDS in unlawful sales transactions.
- b. Solicit business from entities that send cigarettes, smokeless tobacco, or ENDS to consumers by mail in unlawful sales transactions.
- c. Except for inbound or outbound international mail, report single packages of matter nonmailable under the PACT Act or POSECCA to the Inspection Service. Contact the Inspection Service if presented with information that a customer is sending large quantities of matter nonmailable under the PACT Act and POSECCA.

Instructions for Sales Personnel

Postal Service employees must contact the Inspection Service and/or the Law Department if there is reason to believe a current or prospective customer may be, or may intend to begin, selling or distributing cigarettes, smokeless tobacco, or ENDS devices to consumers through the mail.

If there is reason to believe that a current or prospective customer may be, or may intend to begin, shipping such items to other businesses or to government agencies, such activity is generally only permissible to the extent authorized by the PCSC. To confirm that the customer is not seeking incentives to engage in unlawful activity, take the following actions:

1. Ask the customer to provide a letter (and, for ENDS, approved worksheets) from the PCSC authorizing such shipments.
2. Contact the PCSC and/or the Law Department to confirm that the customer's documentation is legitimate and current.
3. Obtain written confirmation from the customer that it ships such products only at those mailing locations and to those addressees listed in the PCSC-approved documentation.

Factors informing the basis for reasonable belief include any of the following:

- a. A customer's name or address.
- b. Correspondence or conversations with the customer about the customer's business.
- c. Information from the customer's website or other online sources.
- d. Samples of customer mailings.
- e. Information from other customers about the business activities of the customer in question.
- f. Any other information that suggests a customer may be, or may intend to begin, selling or distributing cigarettes, smokeless tobacco, or ENDS through the mail.

Actions Not Authorized: Except as noted below, Sales personnel are not authorized to do any of the following:

- a. Solicit business from entities that send cigarettes, smokeless tobacco, or ENDS to consumers by mail.
- b. Solicit business from entities that send cigarettes, smokeless tobacco, or ENDS to businesses or government agencies by mail without PCSC authorization.
- c. Allow business or governmental mailers to include nonmailable matter, including matter nonmailable under the PACT Act or POSECCA, in projections used to determine eligibility for volume-based pricing or other favorable conditions.

Customers in Alaska and Hawaii: Certain shipments within Alaska and Hawaii may not be subject to the restrictions discussed in this MI. Contact the Law Department if there are indications that cigarettes, smokeless tobacco, or ENDS mailing activity is being conducted by a customer located in Alaska or Hawaii.

References

For detailed information related to exceptions for mailing cigarettes, smokeless tobacco, or ENDS, refer to Publication 52 and Field Information Kit: PACT Act ENDS Products.