

47 Cigarettes and Smokeless Tobacco

471 **Definitions**

471.1 **Cigarette**

Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and any roll of tobacco wrapped in any substance containing tobacco, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. The term cigarette includes roll-your-own-tobacco and excludes cigars.

471.2 **Smokeless Tobacco**

Any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

471.3 **Cigar**

Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, unless, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

471.4 **Roll-your-own tobacco**

Any tobacco, which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

471.5 **Consumer Testing**

Testing limited to formal data collection and analysis for the specific purpose of evaluating the product for quality assurance and benchmarking purposes of cigarette brands or sub-brands among existing adult smokers.

471.6 **State**

Any of the 50 states of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

472 **Mailability**

472.1 **General**

Except as provided in [472.2](#), all cigarettes (including roll-your-own tobacco) and smokeless tobacco are nonmailable and shall not be deposited in or carried through the Postal Service mailstream. Nonmailable cigarettes and smokeless tobacco deposited in the mail are subject to seizure and forfeiture. Any nonmailable cigarettes and smokeless tobacco products seized and forfeited shall be destroyed or retained by the federal government for the detection or prosecution of crimes or related investigations and then destroyed. Senders of nonmailable cigarettes and smokeless tobacco may

be subject to seizure and forfeiture of assets, criminal fines, imprisonment, and civil penalties. The Postal Service will not accept for delivery or transmit any package that it knows, or has reasonable cause to believe, contains nonmailable cigarettes or smokeless tobacco. If the Postal Service reasonably suspects that a mailer is tendering nonmailable cigarettes or smokeless tobacco, then the mailer bears the burden of proof in establishing eligibility to mail. The Postal Service has reasonable cause not to accept for delivery or transmit a package based on:

- a. A statement on a publicly available website, or an advertisement, by any person that the person will mail matter which is nonmailable under this section in return for payment; or
- b. The fact that the mailer or other person on whose behalf a mailing is being made is on the U.S. Attorney General's List of Unregistered or Noncompliant Delivery Sellers.

472.2 **Mailability Exceptions**

Cigarettes and smokeless tobacco are mailable if one of the conditions in [472.21](#) through [472.25](#) is met. These exceptions only apply to domestic mail under DMM 608.2.1, including mail sent from the United States to Army Post Office (APO), Fleet Post Office (FPO), or Diplomatic Post Office (DPO) addresses to which tobacco is not restricted (see DMM 703.2.3.1), with the exception that delivery procedures for overseas military mail under the certain individuals exception in [472.23](#) may vary as practicable. These exceptions do not apply to the following:

- a. Mail treated as domestic under DMM 608.2.2.
- b. International mail as defined in DMM 608.2.3.
- c. Mail presented at APO, FPO, or DPO installations destined to addresses in the United States.

472.21 **Mailing within Noncontiguous States**

Applicable mailings may not be tendered through Pickup on Demand or Package Pickup services. Intra-Alaskan and intra-Hawaiian shipments of cigarettes or smokeless tobacco are mailable, provided that such mailings:

- a. Are presented in a face-to-face transaction with a Postal Service employee within the state;
- b. Destinate in the same state of origin;
- c. Bear a valid complete return address that is within the state of origin; and,
- d. Are marked with the following exterior marking on the address side of the mailpiece: "INTRASTATE SHIPMENT OF CIGARETTES OR SMOKELESS TOBACCO."

472.22 **Exception for Business/Regulatory Purposes**

Eligibility to mail and to receive mail under the business/regulatory purposes exception is limited to federal and state government agencies and legally operating businesses that have all applicable state and federal government

licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research under the conditions in [472.221](#) to [472.223](#).

472.221 **Application**

Each customer seeking to mail cigarettes or smokeless tobacco under the business/regulatory purposes exception must complete an application letter requesting to mail under the business/regulatory purposes exception.

- a. The applicant must furnish:
 - (1) Information about its legal status, any applicable licenses, and authority under which it operates;
 - (2) Information about the legal status, any applicable licenses, and operational authority for all entities to which the applicant's mailings under this exception will be addressed; and
 - (3) All locations where mail containing cigarettes and smokeless tobacco will be presented.
- b. The applicant must establish its and its recipients' eligibility as legally operating businesses that have all applicable state and federal government licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research; or, in the case of mailings for regulatory purposes, as a federal or state agency. Only those shipments containing otherwise nonmailable tobacco addressed to recipients on the customer's list of designated recipients are eligible for the business/regulatory purposes exception.
- c. Applications must be mailed to the manager, Pricing and Classification Service Center (PCSC). See [213](#) for address. The manager, PCSC, issues the initial agency decision of a determination of eligibility to mail under the business/regulatory purposes exception. A number is assigned to each letter of eligibility.
- d. The applicant must update the information in its application in a timely manner, as necessary, prior to conducting any mailing for as long as it continues to mail under the business/regulatory exception.
- e. Customers whose applications or amendments to existing applications are denied in whole or in part may appeal to the manager, Product Classification (see [214](#)).
- f. Eligibility to mail under the business/regulatory purposes exception may be revoked by the manager, PCSC, in the event of failure to comply with any applicable rules and regulations. A customer may appeal an adverse initial decision to the manager, Product Classification (see [214](#) for address). Decisions by the manager, Product Classification, to uphold the denial of an application or to revoke a customer's eligibility under the business/regulatory purposes exception may be appealed to the Judicial Officer under 39 C.F.R. Part 953.
- g. Upon written request by a state or federal agency, the manager, PCSC, may, in his or her discretion, waive certain application requirements for mailings entered by the requesting state or federal agency for regulatory purposes.

- h. Any determination of eligibility to mail under this exception shall lapse if the authorized mailer does not tender any mail under this exception within any 3-year period. After that time, the affected mailer must apply for and receive new authorization for any mailings under this exception.

472.222 **Mailing**

Customers eligible to mail under the business/regulatory purposes exception may enter mailings of cigarettes and smokeless tobacco only at the locations specified in the customer's application. Applicable mailings may not be tendered through Pickup on Demand or Package Pickup services. Before mailing any shipment under this exception, the mailer must present proof that the PCSC has authorized the mailer to mail such shipments at that location. All mailings under the business/regulatory purposes exception must:

- a. Be entered in a face-to-face transaction with a Postal Service employee (package pickup not permitted) as Priority Mail Express with Hold for Pickup service, Priority Mail Express with an Adult Signature service (see DMM 503.9.0), or Priority Mail with an Adult Signature service;
- b. Be accompanied by a request for PS Form 3811 return receipt, which must bear the sender's PACT eligibility number issued by the PCSC in the return address block as well as the addressee's full name and address, and made returnable to the PCSC, PACT Mailing Office (see DMM 608.4.1 for address);
- c. Bear the marking "PERMITTED TOBACCO MAILING — DELIVER ONLY TO ADDRESSED BUSINESS/AGENCY — RECIPIENT MUST FURNISH PROOF OF AGE AND EMPLOYMENT" on the address side of the mailpiece (place the marking directly above, below, or to the left of the postage);
- d. Bear the business or government agency name and full mailing addresses of both the sender and recipient, both of which must match exactly those listed on the customer's application on file with the Postal Service.

472.223 **Delivery**

Mailings bearing the marking for business/regulatory purposes can only be delivered to a verified employee of the addressee business or government agency. The recipient must show proof that he or she is an employee of the business or government identified as the addressee on the mailing label under the following conditions:

- a. The recipient must be an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of delivery. The recipient must furnish proof of age via a driver's license, passport, or other government-issued photo identification that lists age or date of birth.
- b. Once age and the recipient's identity as an employee of the addressee are established, the recipient must sign PS Form 3849 and PS Form 3811 in the appropriate signature blocks. If the mailer's eligibility number is missing in the return address block of the PS Form 3811, the mailing must be returned to sender.

472.23 Exception for Certain Individuals

The exception for certain individuals permits the mailing of small quantities of cigarettes or smokeless tobacco by individual adults to businesses or to other adults. Such shipments may include, but are not limited to, cigarettes and smokeless tobacco exchanged as gifts between individual adults and a damaged or unacceptable tobacco product returned by a consumer to the manufacturer. For purposes of this rule, “gifts” do not include products purchased by one individual for another from a third-party vendor through a mail-order transaction, or the inclusion of cigarettes or smokeless tobacco at no additional charge with other matter pursuant to a commercial transaction. Eligibility to mail under the certain individuals exception may be revoked by the manager, PCSC, in the event of failure to comply with any applicable rules and regulations. A customer may appeal an adverse initial decision to the manager, Product Classification (see [214](#) for address). The mailer bears the burden of proof in establishing eligibility in the event of revocation. Decisions by the manager, Product Classification, to revoke a customer's eligibility under this exception may be appealed to the Judicial Officer under 39 CFR part 953. Mailings under this exception must be made under the conditions in [472.23](#) through [472.233](#).

472.231 Entry and Acceptance

Mailings under the certain individuals exception must be entered under the following conditions:

- a. Cigarettes or smokeless tobacco may only be mailed via a face-to-face transaction with a Postal Service employee. Applicable mailings may not be tendered through Pickup on Demand or Package Pickup services.
- b. Cigarettes or smokeless tobacco may only be entered by an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of entry.
- c. The individual presenting the mailing must furnish government-issued photo identification that lists age or date of birth, such as a driver's license or passport, at the time of the mailing. The name on the identification must match the name of the sender appearing in the return address block of the mailpiece.
- d. For mailings addressed to an individual, at the time the mailing is presented, the customer must orally confirm that the addressee is an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of delivery.

472.232 Mailing

No customer may send or cause to be sent more than 10 mailings under this exception in any 30-day period. Each mailing under the certain individuals exception must:

- a. Be entered (package pickup not permitted) as Priority Mail Express with Hold For Pickup service, Priority Mail Express with an Adult Signature service (see DMM 503.9.0), or Priority Mail with an Adult Signature service, unless shipped to APO/FPO/DPO addresses under [472.234](#).

- b. Bear the marking “PERMITTED TOBACCO MAILING — DELIVER ONLY TO AGE-VERIFIED ADULT OF LEGAL AGE” on the address side of the exterior of the mailpiece (place the marking directly above, below, or to the left of the postage);
- c. Bear the full name and mailing address of the sender and recipient on the Priority Mail Express or Priority Mail label;
- d. Weigh no more than 10 ounces.

472.233 **Delivery**

Delivery under the certain individuals exception is made under the following conditions:

- a. The recipient receiving or signing for the article must be an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of delivery.
- b. The recipient must furnish proof of age via a driver's license, passport, or other government-issued photo identification that lists age or date of birth.
- c. For Priority Mail Express or Adult Signature articles, once age is established, the recipient must sign PS Form 3849 in the appropriate signature block.

472.234 **Tobacco Product Shipments to APO/FPO/DPO**

Shipments of cigarettes and smokeless tobacco may not be sent to APO/ FPO/DPO destination addresses to which the mailing of tobacco is restricted (see DMM 703.2.3.1). To the extent cigarettes or smokeless tobacco are permitted to be mailed to APO/FPO/DPO destination addresses, such mailings under the certain individuals exception must comply with all of the requirements of [472.23](#), with the exception that mailings may be entered as either Priority Mail Express Military Service (EMMS) or Priority Mail service with USPS Tracking/Delivery Confirmation. Regardless of the service elected, the mailing must bear the full name and mailing address of the sender and recipient.

472.24 **Consumer Testing Exception**

The exception for consumer testing permits a legally operating cigarette manufacturer or a legally authorized agent of a legally operating cigarette manufacturer to mail cigarettes to verified adult smokers solely for consumer testing purposes. The manufacturer for which mailings are entered under this exception must have a permit, in good standing, issued under 26 U.S.C. § 5713. The consumer testing exception applies only to cigarettes and not smokeless tobacco. Items must be mailed under conditions in [472.241](#) through [472.243](#).

472.241 **Application**

Each customer seeking to mail cigarettes under the consumer testing exception must submit an application letter to mail under consumer testing exception. In support of its application, the following must be met:

- a. The applicant must furnish information to establish that the customer, or the customer’s principal if the customer is a manufacturer’s agent, is a cigarette manufacturer in good standing under 26 U.S.C. § 5713; if the customer is an agent of a manufacturer, complete details about the agency relationship with the manufacturer; and all locations where mail

containing cigarettes for consumer testing will be presented. The applicant must update all information in its application in a timely manner, as necessary, prior to conducting any mailing for as long as it continues to mail under the consumer testing exception.

- b. As part of its application, the applicant must certify in writing that it will comply with the following requirements:
 - (1) Any recipient of consumer testing samples of cigarettes is an adult established smoker;
 - (2) No recipient has made any payment for the cigarettes;
 - (3) Every recipient will sign a statement indicating that the recipient wishes to receive the mailings;
 - (4) The manufacturer or the legally authorized agent of the manufacturer will offer the opportunity for any recipient to withdraw the recipient's written statement at least once in every 3-month period;
 - (5) Any package mailed under this exception will contain not more than 12 packs of cigarettes (maximum of 240 cigarettes) on which all taxes levied on the cigarettes by the state and locality of delivery have been paid and all related state tax stamps or other tax-payment indicia have been applied; and
 - (6) The manufacturer will maintain records establishing compliance with these obligations for a 3-year period from the date of each mailing.
- c. The application must be submitted to the manager, Pricing and Classification Service Center (PCSC) (see [213](#) for address).
- d. The applicant must provide any requested copies of records establishing compliance to the manager, PCSC, and/or the manager, Product Classification (see [214](#) for address), upon request, no later than 10 business days after the date of the request.
- e. The manager, PCSC, issues the initial agency decision of a determination of eligibility to mail under the consumer testing exception. A number is assigned to each letter of eligibility. Customers whose applications are denied in whole or in part may appeal to the manager, Product Classification. Eligibility to mail under the consumer testing exception may be revoked by the manager, PCSC, in the event of failure to comply with any applicable rules and regulations. Decisions by the manager, Product Classification, to uphold the denial of an application or to revoke a customer's eligibility under the consumer testing exception may be appealed to the Judicial Officer under 39 CFR part 953.
- f. Any determination of eligibility to mail under this exception shall lapse if the authorized mailer does not tender any mail under this exception within any 3-year period. After that time, the affected mailer must apply for and receive new authorization for any further mailings under this exception.

472.242 **Mailing**

Customers eligible to mail under the consumer testing exception may enter mailings of cigarettes only at the locations specified in the customer's application. Applicable mailings may not be tendered through Pickup on Demand or Package Pickup services. Mailings must be tendered under the following conditions:

- a. Before tendering any shipment under this exception, the mailer must present proof (PCSC Eligibility letter) that the PCSC has authorized the mailer to tender such shipments at that location.
- b. All mailings under the consumer testing exception:
 - (1) Be entered in a face-to-face transaction with a Postal Service employee (package pickup not permitted) as Priority Mail Express with Hold For Pickup service, Priority Mail Express with Adult Signature Restricted Delivery service (see DMM 503.9.0), or Priority Mail with Adult Signature Restricted Delivery service;
 - (2) Be accompanied by a request for the PS Form 3811 return receipt, which must bear the sender's PACT eligibility number issued by the PCSC in the return address block, as well as the addressee's full name and address, and be made returnable to:
PCSC, PACT MAILING OFFICE
USPS ELIGIBILITY NO. XX-00-0000
90 CHURCH ST, STE 3100
NEW YORK, NY 10007-2951
 - (3) Must bear the marking "PERMITTED TOBACCO MAILING — DELIVER ONLY TO ADDRESSEE UPON AGE VERIFICATION — AGE 21 OR ABOVE" on the address side of the mailpiece (place the marking directly above, below, or to the left of the postage);
 - (4) Must bear the full mailing addresses of both the sender and recipient on the Priority Mail Express or Priority Mail label (the name and address of the sender must match exactly those listed on the customer's application on file with the PCSC);
 - (5) Are limited in tobacco contents to no more than 12 packs of cigarettes (maximum 240 cigarettes) on which all taxes levied on the cigarettes by the destination state and locality have been paid and all related state tax stamps or other tax-payment indicia have been applied;
 - (6) May not be addressed to an addressee located in a state that prohibits the delivery or shipment of cigarettes to individuals in the destination state;
 - (7) May be sent only to an addressee who has not made any payment for the cigarettes, is being paid a fee for participation in consumer tests, and has agreed to evaluate the cigarettes and furnish feedback to the manufacturer in connection with the consumer test.
- c. Customers must maintain records to establish compliance with the requirements in [472.24](#) for a 3-year period.

- d. Mailing frequency may not exceed more than one package from any one manufacturer to an adult smoker during any 30-day period.
- e. Nothing in these rules shall preempt, limit, or otherwise affect any related state laws.

472.243 **Delivery**

Mailings bearing the marking for consumer testing can only be delivered to the named addressee under the following conditions:

- a. The recipient signing for the Priority Mail Express Hold for Pickup service article must be an adult of at least 21 years of age.
- b. The recipient must furnish proof of age through production of a driver's license, passport, or other government-issued photo identification that lists age or date of birth.
- c. The name on the identification must match the name of the addressee on the Priority Mail Express or Priority Mail label.
- d. Once age is established, the recipient must sign the PS Form 3849 and PS Form 3811 in the appropriate signature blocks. If the mailer's eligibility number is missing in the return address block of the PS Form 3811 return receipt, the mailing must be returned to sender.

472.25 **Public Health Exception**

Federal government agencies involved in the consumer testing of tobacco products solely for public health purposes may mail cigarettes under the mailing standards of [472.24](#), except as provided herein. The federal agency shall not be subject to the requirement that the recipient be paid a fee for participation in consumer tests. Upon written request, the manager, PCSC, may, according to his or her discretion, waive certain application requirements.