

POSTAL SERVICE

39 CFR Part 111

Mailing of Cigarettes and Smokeless Tobacco Products to APO/FPO/DPO Destination Addresses

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 503.9 and 601.11 to permit the mailing of cigarettes and smokeless tobacco to APO/FPO/DPO destination addresses via Express Mail® Military Service or Priority Mail® service with Delivery Confirmation™.

EFFECTIVE DATE: August 27, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Collins, 202-268-5440, Anthony Alverno, 202-268-2997 or Jeff Burger, 202-268-7251.

SUPPLEMENTARY INFORMATION:

On May 5, 2010, the Postal Service published a proposed rule in the *Federal Register* (75 FR 24534-24541) to implement the Prevent All Cigarette Trafficking (PACT) Act of 2009, Pub. L. No. 111-154. After solicitation and consideration of the comments received in response to the proposed rule, the Postal Service published a *Federal Register* final rule on May 27, 2010 (75 FR 29662-29671) to implement the PACT Act effective June 29, 2010.

The final rule established eligibility requirements under which shipments of cigarettes and smokeless tobacco could be sent via U.S. mail under the PACT Act. One of the exceptions in the PACT Act allows for gift shipments sent by certain individuals. The Postal Service implemented this requirement in the final rule by providing that shipments sent by individuals in non-commercial transactions must be sent by Express Mail with Hold for Pickup for domestic shipments. With respect to shipments to Air Force/Army Post Offices (APOs), Fleet Post Offices (FPOs), or Diplomatic Post Offices (DPOs) destination addresses, the standards in DMM section 601.11.6.2 provided that shipments of cigarettes and smokeless tobacco must be sent via Express Mail. This is consistent with the PACT Act requirement that shipments by certain individuals must be sent using "the systems of the Postal Service that provide for the tracking and confirmation of delivery." 18 U.S.C. § 1716E(b)(4)(ii)(IV). Express Mail service offers both tracking and confirmation of delivery and was accordingly required for shipments to APO/FPO/DPO destination addresses.

No comments were received in response to the Postal Service's solicitation for comments on the proposed rule in connection with shipments to APO/FPO/DPO addressees. Subsequent to the publication of the final rule, however, the Postal Service received inquiries from customers concerning the requirement to use Express Mail service for shipments to APO/FPO/DPO destination addresses in Iraq and Afghanistan. In particular, customers advised that Express Mail service is not offered to APO/FPO/DPO destination addresses in certain places where large numbers of troops are located, particularly Iraq and Afghanistan. As a result, the Postal Service undertook to investigate whether there are alternative mailing options for military families sending packages containing cigarettes and smokeless tobacco that would satisfy the requirements of the PACT Act.

To accommodate the needs of military families that ship to these destinations, the USPS[®] has identified alternative mailing options for mailpieces containing cigarettes and smokeless tobacco sent as gifts between individual adults to APO/FPO/DPO destinations. With this change, mailings of cigarettes and smokeless tobacco will be permitted to APO/FPO/DPO destination addresses when using Priority Mail[®] with Delivery Confirmation Service, when not otherwise restricted in accordance with the requirements of the host country. This measure should expand mailing options to accommodate the needs of military families. Mailers should be advised, however, that packages containing mailable cigarettes or smokeless tobacco are still subject to all other requirements in DMM 601.11.6, including marking requirements, a weight limitation of 10 ounces per package, as well as frequency limitations of no more than 10 shipments per 30 day period. The revised frequently asked question below explains the requirement in more detail:

Q: May individual customers in the United States send cigarettes and smokeless tobacco as gifts in overseas military mail?

A. That depends. Some overseas host countries do not allow cigarettes and tobacco items in military mail, and such gifts may be prohibited, so first check the *Postal Bulletin*, or the link at <http://postcalc.usps.gov/Restrictions.aspx>, for cigarette/tobacco restrictions based on the ZIP Code of the APO/FPO/DPO installation. If cigarettes and smokeless tobacco items are permitted, customers must use Express Mail Military Service (EMMS) or Priority Mail with Delivery Confirmation for shipping these items to APO/FPO/DPO destination addresses. For Express Mail shipments, Hold for Pickup service is not required. Regardless of the mail service used, however, the package must weigh 10 ounces or less and bear the complete name and address of the sender and addressee, along with the marking "PERMITTED TOBACCO MAILING — DELIVER ONLY TO AGE-VERIFIED ADULT OF LEGAL AGE." The sender must show photo identification establishing that he or she is at least 18 years old or the minimum age for purchase of tobacco where the package is entered, whichever is higher. Furthermore, at the time of the transaction, the sender must orally affirm that the addressee is at least 18 years old or the minimum age for purchase of tobacco where the package

is being delivered, whichever is higher. No more than 10 such mailings may be sent by a single individual in a 30-day period.

In conjunction with this change, we are also clarifying the product description for Delivery Confirmation when used with products sent to APO/FPO/DPO destination addresses. Specifically, DMM section 503.9.2.1 is clarified to specify that for APO/FPO/ DPO shipments, Delivery Confirmation service may not always provide the mailer with online information regarding the date and time of an event scan.

The applicable standards contained in this final rule will be incorporated into the DMM monthly update on October 4, 2010.

The Postal Service hereby adopts the following changes to the *Mailing Standards for the United States Postal Service*, Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR Part 111.1

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.
Accordingly, 39 C.F.R. Part 111 is amended as follows:

PART 111 – [AMENDED]

1. The authority citation for 39 C.F.R. Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

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500 Additional Mailing Services

503 Extra Services

* * * * *

9.0 Delivery Confirmation

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9.2. Basic Information

9.2.1 Description

[Revise 9.2.1 by adding a new last sentence as follows:]

* * * For mailings to APO/FPO/DPO destination addresses, Delivery Confirmation service may not always provide the mailer with online information regarding the date and time of an event scan.

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

11. 0 Cigarettes and Smokeless Tobacco

* * * * *

11.3 Mailability Exceptions

* * * These exceptions do not apply to the following:

* * * * *

[Revise text in item 11.3 c as follows:]

- c. mail presented at APO, FPO, or DPO installations destined to addresses in the United States.

* * * * *

11.6 Exception for Certain Individuals

* * * * *

11.6.2 Mailing

* * * Each mailing under the certain individuals exception must:

[Revise text in item "a" as follows and delete items "e" through "g" in their entirety.]

- a. Be entered as Express Mail with Hold for Pickup service (waiver of signature and pickup services not permitted); unless shipped to APO/FPO/ DPO addresses under 11.6.4.

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11.6.3 Mailing

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

[Revise text in items "a" and "c" as follows:]

- 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. * * *

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- c. For Express Mail articles, once age is established, the recipient must sign PS Form 3849 in the appropriate signature block.

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[Add new item 11.6.4 as follows:]

11.6.4 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 703.2.3.1). To the extent cigarettes or smokeless tobacco are permitted to be mailed to an APO/FPO/DPO destination addresses, such mailings under the certain individuals exception must comply with all of the requirements of 11.6, with the exception that mailings may be entered as either Express Mail Military Service (EMMS) or Priority Mail service with Delivery Confirmation. Regardless of the service elected, the mailing must bear the full name and mailing address of the sender and recipient.

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We will publish an amendment to 39 C.F.R. 111 to reflect these changes.

Stanley F. Mires

Chief Counsel, Legislative.

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