**Publication 52 Revision: Cigarettes, Smokeless Tobacco, and Electronic Nicotine Delivery Systems**

Effective October 21, 2021, the Postal Service™ is revising Publication 52, *Hazardous, Restricted, and Perishable Mail* (Pub 52) section 47, to incorporate new statutory restrictions on the mailing of electronic nicotine delivery systems (ENDS) including their liquids, parts, components and accessories. Such items will be subject to the same prohibitions as cigarettes and smokeless tobacco due to the enactment of the Preventing Online Sales of E-Cigarettes to Children Act on December 27, 2020. The Act adds ENDS to the definition of “cigarettes” under the Jenkins Act and and prohibits their mailing unless qualifying for an exception as outlined in the revision of Pub 52. These changes will align the Postal Service™ with Federal legislation and provide clarification regarding the mailability exceptions related to ENDS, which were not previously included in Publication 52.

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**Publication 52, *Hazardous, Restricted, and Perishable Mail***

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**4 Restricted Matter**

\* \* \* \* \*

 *[Revise title of section 47 to read as follows:]*

**47 Cigarettes, Smokeless Tobacco, and Electronic Nicotine Delivery Systems**

\* \* \* \* \*

**471 Definitions**

*[Revise the last sentence of section 471.1 to read as follows:]*

**471.1 Cigarette**

\* \* \* The term cigarette includes roll-your-own tobacco and excludes cigars.

\* \* \* \* \*

*[Revise the title of section 471.4 to read as follows:]*

**471.4 Roll-Your-Own Tobacco**

\* \* \* \* \*

*[Insert new sections 471.5 and 471.6 to read as follows and renumber existing sections 471.5 and 471.6 to 471.7 and 471.8:]*

**471.5 Electronic Nicotine Delivery System (ENDS)**

Any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device. ENDS include but are not limited to, electronic cigarettes (e-cigarettes), electronic hookahs (e-hookahs), electronic cigars (e-cigars), vape pens, advanced refillable personal vaporizers, and electronic pipes. Any reference to ENDS also includes any component, liquid, part, or accessory of an ENDS device, regardless of whether the component, liquid, part, or accessory is sold or provided separately from the device.

**471.6 Covered Product**

For purposes of chapter 47, any cigarette, smokeless tobacco, or ENDS.

\* \* \* \* \*

*[Insert new section 471.9 to read as follows:]*

**471.9 Minimum Age**

21 years of age (the federal minimum age for the sale or purchase of covered products), or such higher age that a state or municipality may impose for the legal sale or purchase of covered products at the place of acceptance or delivery, as appropriate.

\* \* \* \* \*

*[Revise section 472 to read as follows:]*

**472 Covered Products Generally Nonmailable**

**472.1** **General**

The following are nonmailable:

1. Shipments of covered products described in section 473.1.a through 473.1.e
2. Shipments of covered products that are not described in section 473.1.a through 473.1.e and do not qualify for an exception under 473.2 through 473.6.
3. Shipments of covered products that are not described in 473.1.a through 473.1.e and would generally qualify for an exception under 473.2 thorugh 473.6, but fail to meet one or more conditions for the applicable exception. For example, a recipient may fail to be verified as being of at least the minimum age (see 473.34.a, 473.44.a, 473.54.a), or a Return Receipt may be absent or may lack the mailer’s eligibility number (see 473.32.b, .52.c).

**472.2 Treatment of Nonmailable Covered Products**

**472.21 Refusal of Acceptance and Transmission**

The Postal Service will not accept, forward, or deliver any package that it knows, or has reasonable cause to believe, contains nonmailable covered products. If the Postal Service reasonably suspects that a mailer is tendering nonmailable covered products, then the mailer bears the burden of proof in establishing eligibility to mail.

**472.22 Seizure and Forfeiture**

Nonmailable covered products deposited in the mail are subject to seizure and forfeiture. Any nonmailable covered 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.

**472.23 Disposition of Nonmailable Covered Products Not Seized and Forfeited**

Any nonmailable covered products not seized and forfeited shall be handled in accordance with sections 216 and 414.

**472.24 Penalties**

Persons involved in the shipment or attempted shipment of nonmailable covered products may be subject to seizure and forfeiture of assets, criminal fines, imprisonment, and civil penalties.

**472.3 Reasonable Cause to Suspect Covered Products**

Among any other potentially relevant circumstances, the Postal Service has reasonable cause to suspect the presence of covered products based on:

1. 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;
2. 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; or
3. Any other characteristics of a package or label, individually or in combination with other packages or labels, that reasonably indicate the likely presence of covered products.

**472.4 Applicability of Other Laws and Regulations**

Shipments permitted under 473 are subject to all other applicable federal, state, and local laws and regulations. For example, ENDS that consist of or contain controlled substances (including cannabis and cannabis derivatives), drug paraphernalia, lithium batteries, liquids, or any toxic or flammable substance (e.g., nicotine, diacetyl (butane-2,3-dione), propanol, and other components of ENDS liquids) may be subject to prohibitions, restrictions, or additional requirements stated elsewhere in this publication. Mailers, recipients, and applicants are solely responsible for complying with all applicable Postal Service regulations and other federal, state, and local laws when mailing covered products.

**472.5 Recordkeeping**

Mailers, recipients, and applicants must maintain records to establish compliance with the requirements in 473 for a 6-year period and must make such records available to the Postal Service upon request.

\* \* \* \* \*

*[Insert new section 473 to read as follows:]*

**473 Mailability Exceptions**

**473.1 Scope of Exceptions**

Covered products are mailable if one of the conditions in 473.2 through 473.6 is met. These exceptions do not apply to the following:

1. Mail treated as domestic under DMM 608.2.2.
2. Mail sent to Air/Army Post Office (APO), Fleet Post Office (FPO), or Diplomatic Post Office (DPO) addresses.
3. Mail presented at APO, FPO, or DPO installations and destined to addresses in the United States.
4. International mail as defined in DMM 608.2.3.
5. Mail presented outside of a face-to-face transaction with a Postal Service employee at a Postal Service retail or business mail acceptance location. Examples of prohibited entry methods include, but are not limited to, Pickup on Demand; package pickup; an Approved Shipper location or other third-party acceptance location; a Contract Postal Unit; a Village Post Office; and placement in a customer mailbox, collection box, or Postal Service lobby drop.

**473.2 Intra-Alaska and Intra-Hawaii Shipments**

Intra-Alaska and intra-Hawaii shipments of covered products are mailable, provided that such mailings:

1. Are presented in a face-to-face transaction with a Postal Service employee within the state, and not through any entry method prohibited under 473.1.e;
2. Destinate in the same state of origin;
3. Bear a valid complete return address that is within the state of origin; and,
4. Are marked with the following exterior marking on the address side of the mailpiece, with the relevant type of item selected: “INTRASTATE SHIPMENT OF [CIGARETTES/SMOKELESS TOBACCO/ENDS].”

**473.3 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 the manufacturing, distribution, wholesale, export, import, testing, investigation, or research of covered products. Mailings under this exception are permitted only for business purposes between eligible businesses or for regulatory purposes between such businesses and eligible government agencies. Mailability is further restricted to mailings that comply with all conditions in sections 473.31 to 473.34.

**473.31 Application**

Each customer seeking to mail covered products under the business/regulatory purposes exception must submit a complete application (PS Form 4615 or 4615-E, as appropriate) and, for ENDS, complete Worksheets 4615-EM and 4615-ER as appropriate, along with all supporting documentation requested on those forms and worksheets.

1. Along with any other information requested on PS Form 4615 or 4615-E and Worksheets 4615-EM and 4615-ER, the applicant must furnish:
2. Information about its legal status, copies of any applicable licenses, and authority under which it operates.
3. Information about the legal status, copies of any applicable licenses, and operational authority for all recipients to which the mailings under this exception will be addressed.
4. All Post Office locations where mail containing covered products will be presented.
5. For each business mailer and/or recipient, the nature of the relevant business activities (e.g., manufacturing, wholesale, distribution, testing, investigation, import, export).
6. The brand name and a description of each product intended to be mailed. For ENDS, descriptions must include information about the source of any CBD; the concentration of any THC; and safety data sheets or technical specification documentation for any hazardous materials (e.g., lithium batteries, nicotine, diacetyl (butane-2,3-dione), propanol).
7. The applicant is responsible for establishing the eligibility of each sender and recipient and for the accuracy, completeness, and currency of all information provided in the application.
8. Applications must be submitted as follows:
9. For cigarettes and smokeless tobacco (PS Form 4615): by email to MDA@usps.gov.
10. For ENDS (PS Form 4615-E and Worksheets 4615-EM and 4615-ER): by email to MDA@usps.gov.
11. The Director, PCSC, will make a determination of eligibility to mail under the business/regulatory purposes exception. The mailer bears the burden of establishing eligibility and must furnish any additional supporting documentation requested by the Director, PCSC, upon request as necessary to establish eligibility. The Director, PCSC, may approve or deny an application in its entirety or only with respect to certain mailers and/or recipients. A number is assigned to each letter of eligibility.
12. The applicant must update the information in its application, including any updated documentation, in a timely manner, as necessary, at least 15 days prior to conducting any mailing to or from an entity to which the information pertains.
13. Upon written request by a state or federal agency, the Director, PCSC, may, in his or her discretion, waive certain application requirements for mailings entered by the requesting state or federal agency for regulatory purposes. The Director, PCSC, may suspend, rescind, or modify any waiver at any time.
14. 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.
15. Current lists of authorized mailers shall be made available to retail and business mail acceptance personnel.

**473.32** **Mailing**

All mailings tendered under the business/regulatory purposes exception must:

1. Use one of the following combinations of services:
2. Priority Mail Express with Adult Signature Required or Adult Signature Restricted Delivery service (see DMM 503.8.0).
3. Priority Mail with Adult Signature Required or Adult Signature Restricted Delivery service.
4. Be accompanied by a Domestic Return Receipt (PS Form 3811). The sender‘s address block must bear the eligibility number issued by the PCSC and be made returnable to the address as shown below:

PCSC, PACT MAILING OFFICE
USPS ELIGIBILITY NO. XX-00-0000
90 Church St., Ste 3100
New York, NY 10007-2951

1. Bear the following marking, with the relevant type of item and recipient selected: “[CIGARETTE, SMOKELESS TOBACCO, or ENDS] MAILING—DELIVER ONLY TO EMPLOYEE OF ADDRESSEE [BUSINESS or AGENCY] UPON AGE VERIFICATION” on the address side of the mailpiece.
2. 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 authorized mailer’s application on file with the Postal Service.
3. Be entered at a retail and/or business mail acceptance location specified in the application and authorized by the PCSC.

**473.33 Entry and Acceptance**

Mailings under the business/regulatory purposes exception must be entered under the following conditions:

1. Covered products must be tendered via a face-to-face transaction with a Postal Service employee. Applicable mailings may not be tendered through any entry method prohibited under 473.1.e.
2. The mailer must present Postal Service acceptance personnel with the following:
3. For shipments of cigarettes and/or smokeless tobacco, a letter from the PCSC showing that the PCSC has authorized the mailer, addressee, and acceptance location.
4. For shipments of ENDS:
5. A letter from the PCSC showing that the PCSC has authorized the mailer and has not withheld authorization as to the addressee;
6. A PCSC-approved Worksheet 4615-EM showing that the PCSC has authorized the mailer and the acceptance location; and
7. A PCSC-approved Worksheet 4615-ER showing that the PCSC has authorized the addressee.
8. The Postal Service employee must verify that the actual mailer, addressee, and acceptance location match those authorized by the PCSC, based on the mailer’s documentation and the current list of authorized mailers available to the Postal Service employee.

**473.34 Delivery**

Mailings bearing the marking for business/regulatory purposes can only be delivered to a verified employee of the addressee business or government agency under the following conditions:

1. The recipient must be an adult of at least the minimum age (see 471.9) at the place of delivery. The recipient’s age must be verified by a postal employee before releasing or delivering the item to the recipient. 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.
2. The recipient must demonstrate status as an employee of the business or government agency identified as the addressee on the mailing label. Proof of employment may take the form of an employee identification badge or card issued by the employer and including the employee’s name, the employer’s name, and the employer’s telephone number; a signed letter on company or agency letterhead from a supervisor or human relations office attesting to the recipient’s current employment; or any other form of identification that the postmaster deems to be of comparable reliability. Where delivery is made to a business address, employment status may be inferred from the carrier’s observation of such factors as the recipient’s uniform and presence at a reception desk or retail counter.
3. Once the recipient’s age and identity as an employee of the addressee are established, the recipient must sign for receipt of delivery and in the appropriate signature block of PS Form 3811.

**473.4 Exception for Certain Individuals**

The exception for certain individuals permits the mailing of small quantities of covered products by individual adults for noncommercial purposes. Mailability is further restricted to mailings that comply with all conditions in sections 473.41 to 473.44. Eligible shipments may be made to any type of recipient (individual, business, government, or other organization).

**473.41 Noncommercial Purposes**

Noncommercial purposes may include, but are not limited to, the following:

1. Covered products exchanged as gifts between individual adults. For purposes of this rule, “gifts” do not include covered products purchased by one individual for another from a third-party vendor through a mail-order transaction, or the inclusion of covered tobacco products at no additional charge with other matter pursuant to a commercial transaction.
2. Damaged or unacceptable covered products returned by a consumer to the manufacturer or other business. For purposes of the noncommerciality requirement, the manufacturer or other business may provide the consumer with a refund, credit, replacement product, or other form of value in exchange for the damaged or unacceptable covered product, so long as it does not exceed the amount that the consumer paid for the damaged or unacceptable product plus the cost of return shipping for the damaged or unacceptable product.
3. Used covered products sent by a consumer to a manufacturer or other business for recycling. For purposes of this rule, the consumer must not receive anything of value (e.g., a discount, credit, or rebate) in exchange for a returned item.

**473.42 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:

1. Weigh no more than 10 ounces.
2. Use one of the following combinations of services:
3. Priority Mail Express with Adult Signature Required or Adult Signature Restricted Delivery service (see DMM 503.8.0).
4. Priority Mail with Adult Signature Required or Adult Signature Restricted Delivery service.
5. Bear the full name and mailing address of the sender and recipient on the Priority Mail Express or Priority Mail label.
6. Bear the following exterior marking on the address side of the mailpiece, with the relevant type of item selected: “PERMITTED [CIGARETTE/ SMOKELESS TOBACCO/ ENDS] MAILING—DELIVER ONLY UPON AGE VERIFICATION.”

**473.43 Entry and Acceptance**

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

1. Covered products must be tendered via a face-to-face transaction with a Postal Service employee. Applicable mailings may not be tendered through any entry method prohibited under 473.1.e.
2. The individual presenting the mailing must furnish a driver’s license, passport, or other government-issued photo identification that lists age or date of birth. The name on the identification must match the name of the sender appearing in the return address block of the mailpiece. The customer must be an adult of at least the minimum age at the place of acceptance (see 471.9).
3. 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 at the place of delivery (see 471.9).

**473.****44 Delivery**

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

1. The recipient receiving or signing for the article must be an adult of at least the minimum age at the place of delivery (see 471.9). This must be confirmed by postal employees before releasing or delivering the item to the recipient. 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.
2. Once age is established, the recipient must sign for receipt of delivery.

**473.5 Consumer Testing Exception**

The consumer testing exception 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 to smokeless tobacco or ENDS. Mailability is further restricted to mailings that comply with all conditions in sections 473.51 to 473.54.

**473.51 Application**

Each person seeking to mail cigarettes under the consumer testing exception must submit a complete application (PS Form 4616), along with all supporting documentation requested on that form, by email to MDA@usps.gov. For each application, the following conditions must be met:

1. The applicant must furnish the following information:
2. A copy of the relevant manufacturer’s permit issued under 26 U.S.C. § 5713.
3. If the applicant is an agent of a manufacturer, complete details about the agency relationship with the manufacturer.
4. All locations where mail containing cigarettes for consumer testing will be presented.
5. As part of its application, the applicant must certify in writing that it will comply with the following requirements:
6. Any recipient of consumer testing samples of cigarettes is an adult established smoker.
7. No recipient has made any payment for the cigarettes.
8. Every recipient will sign a statement indicating that the recipient wishes to receive the mailings.
9. 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.
10. Any package mailed under this exception will contain no 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.
11. The application must be submitted to the Director, Pricing and Classification Service Center (PCSC) via email to MDA@usps.gov. The applicant bears the burden of establishing eligibility.
12. The applicant must provide any requested copies of records establishing compliance to the Director, PCSC, and/or the Director, Product Classification (see 214 for address), upon request, no later than 10 business days after the date of the request.
13. The Director, PCSC, will make a determination of eligibility to mail under the consumer testing exception. The Director, PCSC, may approve or deny an application in its entirety or only with respect to certain mailers and/or recipients. A number is assigned to each letter of eligibility.
14. An applicant or authorized mailer must update the information in its application with the Director, PCSC, as necessary, in a timely manner upon becoming aware of a change in application information, not later than 15 days prior to conducting any mailing, for as long as it continues to mail under the consumer testing exception.
15. 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 mailer must apply for and receive new authorization for any further mailings under this exception.
16. Current lists of authorized mailers shall be made available to retail and business mail acceptance personnel.

**473.52 Mailing**

All mailings under the consumer testing exception:

1. Must be limited in tobacco content 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.
2. Must use one of the following combinations of services:
3. Priority Mail Express with Adult Signature Restricted Delivery service (see DMM 503.8.0).
4. Priority Mail with Adult Signature Restricted Delivery service.
5. Be accompanied by a Domestic Return Receipt (PS Form 3811). The sender’s address block must bear the eligibility number issued by the PCSC and be made returnable to the address as shown below:

PCSC, PACT MAILING OFFICE
USPS ELIGIBILITY NO. XX-00-0000
90 Church St., Ste 3100
New York, NY 10007-2951

1. Must bear the following marking: “PERMITTED CIGARETTE MAILING—DELIVER ONLY TO ADDRESSEE UPON AGE VERIFICATION” on the address side of the mailpiece.
2. Must bear the name and full mailing addresses of both the mailer and recipient, both of which must match exactly those listed on the authorized mailer’s application on file with the Postal Service.
3. 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.
4. 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.
5. May not exceed more than one package from any one manufacturer to an adult smoker during any 30-day period.
6. Must be entered at a retail and/or business mail acceptance location specified in the application and authorized by the PCSC.

**473.53 Entry and Acceptance**

Mailings under the consumer testing exception must be entered under the following conditions:

1. Covered products must be tendered via a face-to-face transaction with a Postal Service employee. Applicable mailings may not be tendered through any entry method prohibited under 473.1.e.
2. The mailer must present Postal Service acceptance personnel with a letter from the PCSC showing that the PCSC has authorized the mailer, addressee, and acceptance location.
3. The Postal Service employee must verify that the actual mailer, addressee, and acceptance location match those authorized by the PCSC, based on the mailer’s documentation and the current list of authorized mailers available to the employee.

**473.****54 Delivery**

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

1. The recipient signing for the article must be an adult of at least 21 years of age. The recipient’s age must be verified by a postal employee before releasing or delivering the item to the recipient. 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. The name on the identification must match the name of the addressee on the Priority Mail Express or Priority Mail label.
2. Once the recipient’s age and identity are established, the recipient must sign for receipt of delivery and in the appropriate signature block of PS Form 3811.

**473.6 Public Health Exception**

Federal government agencies involved in the consumer testing of tobacco products solely for public health purposes may mail cigarettes (this does not apply to smokeless tobacco or ENDS) under the mailing standards of 473.5, except as follows:

1. The federal agency is not required to have a manufacturer’s permit issued under 26 U.S.C. § 5713.
2. The recipient is not required to be paid a fee for participation in consumer tests.
3. Upon written request, the Director, PCSC, may waive certain application requirements for mailings entered by the requesting federal agency. The Director, PCSC, may suspend, rescind, or modify any waiver at any time.

**473.7 Suspension or Revocation of Eligibility**

Eligibility to mail under one or more exceptions in sections 473.2 through 473.6 may be suspended or revoked by the Director, PCSC, in the event of failure to comply with any applicable law or regulation. A customer may appeal an adverse initial decision to the Director, Product Classification (see 214 for address). The mailer bears the burden of proof in establishing eligibility in any appeal of a suspension or revocation decision and of furnishing all supporting documentation when requested. Decisions by the Director, Product Classification, to revoke a customer‘s eligibility under any exception may be appealed to the Judicial Officer under 39 CFR Part 953.

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*[Insert new section 474 to read as follows:]*

**474 Additional Guidance**

**474.1 Interpretative Guidance**

The definitions in sections 471.1 through 471.5 and the exclusion in section 474.2 are pursuant to section 1 of the Jenkins Act (15 U.S.C. § 375), which is administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Interpretative guidance regarding these provisions may be requested by contacting ATF at the following address, with a copy to the Pricing and Classification Service Center (PCSC) (see 213 for address):

Bureau of Alcohol, Tobacco, Firearms and Explosives

99 New York Avenue NE

c/o 90 K St. NE, Ste. 250

Washington, DC 20226

**474.2 Exclusion of Products Approved for Tobacco Cessation or Therapeutic Purposes**

A product is excluded from the definition of ENDS in 471.5 (15 U.S.C. § 375(7)(C)) if:

1. It is approved by the Food and Drug Administration for sale as a tobacco cessation product or any other therapeutic purpose; and
2. Is marketed and sold solely for such purposes.

Any party who believes that a product to be sent through the mails qualifies for this exclusion should provide appropriate documentation to ATF at the address in 474.1, with a copy to the PCSC.

*- Product Classification, Product Solutions, 10-21-21*