

**STATEMENT OF
U.S. POSTAL SERVICE SENIOR VICE PRESIDENT, GENERAL COUNSEL
MARY ANNE GIBBONS
BEFORE THE
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA
OF THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC**

April 24, 2008

Good afternoon, Chairman Davis, Chairman Waxman, and members of the Subcommittee. I am pleased to have the opportunity to report to you today on the measures the United States Postal Service has taken, in cooperation with federal, state, and local law enforcement officials, to address the problems regarding cigarettes and smokeless tobacco.

Ecommerce has been a boon to our economy. The Internet presents business opportunities, as well as challenges, for the Postal Service. In recent years, we have been informed of issues related to the sale of tobacco products over the Internet, which sometimes reach minors.

We have been told that sales of cigarettes over the Internet frequently violate the Jenkins Act, which requires the cigarette seller to send reports to the destination-state's tax authorities to facilitate the collection of state taxes. Such sales may also run afoul of state tax and public health codes.

Some tobacco-related transactions conducted over the Internet are fulfilled by shipping the products through the Postal Service. Therefore, policymakers concerned about unlawful tobacco sales have requested that the Postal Service take action to reduce the ability of tobacco retailers to use the Postal Service for illicit sales.

Although tobacco products are presently eligible to be entered into the mail, we are committed to working with state, local, and federal officials to combat illegal tobacco transactions. The Postal Service has taken several steps using our existing authority to address this issue, such as information sharing with foreign posts, and collaborating with ongoing law enforcement initiatives to prosecute illegal activity.

The Postal Service has also collaborated with experts from the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE), Federal Trade Commission, Customs & Border Protection (CBP), State Department, and Treasury Department to develop a comprehensive listing of relevant restrictions on the importation of cigarettes into the United States. We led the effort on this initiative because state attorneys general and federal law enforcement officials had previously provided information demonstrating that there had been considerable growth in unlawful cigarette sales and importation practices associated with cigarettes shipped from abroad.

As a result of our collaboration with other agencies, in April 2006, the United States was able to distribute a circular to postal administrations throughout the world to enable them to educate their customers about the requirements for sending cigarettes to the United States. The circular explains that the importation of cigarettes into the United States is generally prohibited, and that imported cigarettes would be subject to forfeiture and destruction. It also contains detailed descriptions of importation requirements.

A permanent record of these restrictions is now contained in our prohibited items listing, which foreign posts use to identify prohibitions for traffic destined to the United States. We believe that by updating the listing, we may stem some illegal traffic from abroad, thereby aiding law enforcement and tax collection agencies.

The Postal Service has also cooperated with federal and state law enforcement officials to reduce and facilitate prosecution of illegal cigarette and tobacco sales. For several years, we have had a series of meetings and correspondence with the state attorneys general, individually and through the National Association of Attorneys General (NAAG), in which we exchanged information on the scope of the problem and discussed ways of working together to address illicit sales of cigarettes.

We have had similar interactions with the Justice Department and have participated in dialogues with US Attorneys to develop strategies for dealing with illegal tobacco sales. We have worked with the ATFE to facilitate enforcement. For example, beginning in April 2004 and continuing through November 2004, the Postal Inspection Service participated in an interdiction led by the ATFE and CBP to execute a seizure warrant of packages, boxes, containers and envelopes entering the United States at JFK International and Newark Liberty Airports. The operation resulted in the seizure of over 25,000 airline containers, containing more than 200,000 cartons of untaxed cigarettes.

Postal Inspectors in New York provided assistance from the early stages of the case by conducting an investigation of a Swiss company that was marketing tax-free cigarettes through the Internet to customers within the United States. In addition to assisting federal agencies, the Inspectors worked closely with agents from the New York State Department of Finance during the investigation. This case is presently being prosecuted by the United States Attorney's Office for the Southern District of New York, where charges have been filed for violations of the mail fraud statute and the Jenkins Act.

In a separate investigation in New Jersey, Postal Inspectors discovered that individuals had used postal money orders to purchase \$4.5 million worth of cigarettes, structuring the transactions to avoid detection by state tax officials. The targets of the investigation purchased cigarettes over the Internet from Indian reservations in New York, transported the cigarettes to New Jersey, and sold them in restaurants and stores in New Jersey without paying the state sales tax.

The Inspection Service served as the lead agency on the investigation, cooperating with the ATFE, the New Jersey Department of Tax and Finance, the New Jersey State Police, and the Internal Revenue Service. In 2007, five individuals were arrested and charged with money laundering, as well as violations of the Jenkins Act.

The Inspection Service has provided similar assistance to law enforcement agencies on other cases in New York and New Jersey, which are the two busiest states for these activities, as well as in Alaska, Pennsylvania, and Texas.

Cigarettes and smokeless tobacco today are legal and mailable products in the United States. Some cigarette vendors also engage in interstate sales that are legal, such as the sale of non-cigarette and non-tobacco products.

Priority Mail, which is often used for shipping tobacco, is sealed against inspection. Therefore a federal search warrant or consent would be needed to open these packages. Unless the mailer voluntarily discloses that a package contains nonmailable matter, generally the only way to determine whether it contains unlawful contents is to open the package.

We are aware that proposed legislation would make tobacco nonmailable. If Congress is to pursue this path, we recommend that nonmailability language be included in Title 18 of the US Code, rather than Title 39.

Including the mailing prohibition in Title 18, which contains the criminal law statutes, would provide a greater deterrent to unlawful sales that would be subject to criminal penalties, in contrast to the civil penalties proposed under Title 39. This approach would track the regulation of alcohol shipments, which are nonmailable under Title 18.

If the law is changed to make tobacco nonmailable, there are practical difficulties in enforcement, and extraordinary resources might be needed to enforce new restrictions. In 2007, the Postal Service handled 897 million Priority Mail pieces. Unlike private sector shipping companies, the Postal Service does not have contracts with Priority Mail customers, and customers can deposit Priority Mail packages at any one of nearly 37,000 Post Offices in the United States, and if the package is under thirteen ounces, in collection boxes.

The Postal Inspection Service has 1,700 inspectors who work on issues such as narcotics trafficking, child pornography, explosives in the mail, mail theft, and exploitation of the elderly through mail fraud. If a ban on tobacco were enacted, the Postal Inspectors would have to shift resources to combating cigarette mailings, which would likely come at the expense of these other priorities.

Nevertheless, I assure you that the Postal Service is committed to helping law enforcement deal with the problem of illegal sales of cigarettes and smokeless tobacco. We have taken steps to assist ongoing law enforcement efforts within our existing authority and will continue to do our part.

I would be pleased to answer any questions you may have.

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