

Congress of the United States

Washington, DC 20510

December 3, 2015

The Honorable Megan J. Brennan
Postmaster General and Chief Executive Officer
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

Dear Postmaster General Brennan:

We are writing to request a detailed explanation of United States Postal Service (USPS) policy regarding mailed advertisements for marijuana products in states that have legalized marijuana for medical or adult use. Four states, including Oregon, have legalized the adult use and sale of marijuana. In addition, 23 states, the District of Columbia and Guam have legalized full medical marijuana programs, and 17 states have approved more limited medical marijuana programs.

Small businesses and community newspapers rely on advertising to be successful, and our interest is to ensure that these businesses have a clear understanding of the Postal Service policies regarding mailed advertisements for marijuana products so as not to violate the law. From what we have heard from our constituents, it appears a clarification of USPS policy is needed for state-legal marijuana businesses who seek to mail advertisements, as well as newspapers or periodicals that may run ads from marijuana businesses and who rely on the Postal Service to distribute their publications.

For instance, on November 27, the USPS Portland District published a document regarding mail pieces containing advertisements for marijuana published by the Chinook Observer, which in turn informed The Daily Astorian of that document. The Daily Astorian then contacted Senator Wyden's office. That document seems to prohibit mailers that USPS had previously allowed. In order to ensure both the integrity of the USPS and the many businesses that this policy impacts in Oregon, an explanation of how or why the decision to restrict all advertising for marijuana products and businesses outlined in the document would be helpful. We would specifically be interested in clarification of the following issues:

1. What is the specific statutory authority that gives the USPS the ability to restrict the types of advertising that newspapers or periodicals that are mailed contain, if they do not advertise the mailing of any article described in PUB 52, but rather advertise for sale items that are legal under state laws that will not be mailed, nor have any intention of being mailed?
2. Is the document regarding mail pieces containing advertisements for marijuana a USPS headquarters issued document that has legal effect in all 50 states? If not, is it customary for individual districts to create their own policies that may contradict how other districts are operating? What discretion does a regional postmaster have in enforcing or implementing these policies, specifically in states where marijuana is legal?

3. The November 27 document, states that the "...authority for the Controlled Substances Act and implementing laws rests primarily with the Drug Enforcement Administration (DEA)," and that "the USPS cooperates with all other agencies in preserving the laws of the United States." In accordance with a provision that was included in the FY15 federal government spending bill, the Department of Justice (DOJ) is currently barred from spending any funds to prevent such medical marijuana states from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana. Therefore, DEA would arguably not be able to enforce policies regarding the in-state mailing of advertisements for state-legal medical marijuana products. If this is a policy with legal effect in all 50 states, then why is the USPS helping to uphold laws in medical marijuana states that cannot be enforced by the DEA per the appropriations language? Did the USPS cooperate with anyone at DEA or DOJ in establishing this policy? If so, please detail the nature of this cooperation.

We appreciate your prompt response to this request and look forward to working with you to bring greater clarity to this issue. If you or your staff has any questions, please do not hesitate to contact us.


Sincerely,



Ron Wyden
United States Senator



Earl Blumenauer
Member of Congress



Jeff Merkley
United States Senator



Suzanne Bonamici
Member of Congress

Enclosure:

USPS document regarding mail pieces containing advertisements about marijuana



NOVEMBER 27, 2015

MAILPIECES CONTAINING ADVERTISEMENTS ABOUT MARIJUANA

If a mailpiece contains an advertisement for marijuana, that mailpiece is nonmailable as explained below;

Domestic Mail Manual (DMM) 601.9.4.1 restricts any advertising, promotional, or sales matter that solicits or induces the mailing of any article described in PUB 52 as hazardous, restricted, or perishable is nonmailable except that such matter relating to controlled substances, radioactive materials, restricted liquids and powders, battery-powered devices, odd-shaped items in envelopes, and switchblade and ballistic knives, as described in PUB 52, is mailable if it contains packaging instructions and any other mailing limitations under PUB 52, 508.9.0, and 508.10.0 (18 USC 1716).

- If an advertisement solicits the mailing of controlled substances such as marijuana, it would violate USPS mailing standards.
- Marijuana is classified as a Schedule I controlled substance in USC 21 812(c)(10).

USC 21 843(c) does make it unlawful to place an ad in any publication with the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance. It does not include material which advocates the use of a similar material, which advocates a position or practice, and does not attempt to propose or facilitate an actual transaction.

- If an advertisement advocates the purchase of clinical marijuana through a Medical Marijuana Dispensary, it does not comply with USC 21 843(c).
- The authority for enforcing the Controlled Substances Act and implementing laws rests primarily with the Drug Enforcement Administration (DEA) under the Department of Justice.

The USPS cooperates with all other agencies in preserving the laws of the United States.

Per Publication 52, Hazardous, Restricted, and Perishable Mail, 453.31 Controlled Substances, if the distribution of a controlled substance is unlawful under 21 U.S.C. 801 or any implementing regulation in 21 CFR 1300, then the mailing of the substance is also unlawful under 18 U.S.C. 1716. Controlled substances and drugs that contain controlled substances are acceptable in the domestic mail only under limited specified conditions.

If there are any questions regarding advertising marijuana through the mail, please call the Portland District Mailing Requirements Office at (503) 294-2417.

-- Portland District Mailing Requirements