



December 15, 2015

The Honorable Earl Blumenauer
House of Representatives
Washington, DC 20515-3703

Dear Congressman Blumenauer:

This responds to your December 3 letter, co-signed by Senators Ron Wyden and Jeff Merkley and Representative Suzanne Bonamici, requesting information about the Postal Service's policies regarding the mailability of advertisements for marijuana products in states that have legalized the sale of marijuana in some form. You also raised specific questions regarding a policy statement that was circulated in our Portland District and ultimately shared with some of your constituents. As discussed below, the Postal Service appreciates your interest in this issue and understands the need for clarity for our customers and our employees, particularly given the complexities that arise from the current state of the law regarding the sale of marijuana.

As an entity of the Federal Government, the Postal Service's obligation is to make mailability determinations in accordance with the requirements of federal law. Based on our review of the pertinent statutory provisions, we have concluded that advertisements for the sale of marijuana are non-mailable. Under the federal Controlled Substances Act (CSA), marijuana remains a Schedule I "controlled substance" whose sale is prohibited. Further, the CSA prohibits persons from placing "in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance," and from using the mail to facilitate "the commission of any act or acts constituting a felony" under the Act. 21 U.S.C. § 843.

These provisions express Congress's judgment that the mail should not be used as a means of transmitting advertisements for the sale of marijuana, even if that sale is allowed under state law. We believe that we have clear statutory authority to regulate the mail in a way that effectuates Congress's intent in this regard. See 39 U.S.C. §§ 401, 404. Mailers are responsible for complying with postal and non-postal laws and regulations governing mailability. *Domestic Mail Manual § 601.1.3, Postal Operations Manual § 138.12.*

We also recognize the need to provide clear guidance regarding this issue. The statement issued in the Portland District that you have asked about was only distributed within that District and does not purport to instruct other districts. To ensure uniform understanding of this issue, we are issuing the following national policy that will be applied in all postal Districts:

It is unlawful to enter as mail (such as First-Class Mail, Standard Mail, or Periodicals) advertisements that seek or offer to buy or sell Schedule I controlled substances, including marijuana. Mailers are responsible for complying with both postal and non-postal laws which may apply to their mailings, as provided in the DMM and IMM.

Postmasters and Managers of Business Mail Entry are reminded that they are not authorized to decide whether written, printed, or graphic matter is—solely because

of its content—non-mailable. Further, Postmasters and Managers of Business Mail Entry are not permitted to deny entry to such matter or exclude it from the mail.

When mailers attempt to enter non-mailable written, printed, or graphic matter, Postmasters and Managers of Business Mail Entry should advise mailers about applicable mailing standards that pertain to written, printed, or graphic matter in the DMM, including the obligation in the DMM to comply with non-postal laws, such as the Controlled Substances Act. After being so informed, if the mailer insists on depositing written, printed, or graphic matter, the mailing must still be accepted unless it is not otherwise properly prepared for mailing.

If Postmasters and Managers of Business Mail Entry identify written, printed, or graphic matter in the mail that appears non-mailable, following the Postal Operations Manual (POM) they must send a report to the local Inspection Service serving their facility, and the matter would then be turned over to the responsible law enforcement agencies for investigation if appropriate.

If a mailer requests an advance decision on the mailability of a particular mail piece, that request should be promptly referred to the Pricing & Classification Service Center in New York at 212.330.5301 or PCSC@usps.gov for decision.

This national policy clarifies for all interested parties that marijuana advertisements are non-mailable, while also ensuring that any such advertisements are handled by our employees in accordance with existing postal regulations.

We do not believe that Congress's decision to enact Section 538 of the fiscal year 2015 federal appropriations act (the "rider") affects our view that advertisements for the sale of marijuana are non-mailable under the terms of the CSA. Treating advertisements for the sale of medical marijuana as being non-mailable in no way prevents states from implementing their medical marijuana programs, because it does not inhibit the ability of state-sanctioned medical marijuana distributors to conduct their activities in accordance with state law. Rather, it simply clarifies that those distributors cannot use a federal instrumentality—the U.S. Mail—to solicit sales in contravention of federal law. In addition, the issue of whether the Postal Service should treat marijuana advertising as being mailable is distinct from the issue of the Department of Justice's enforcement authority. Even if the rider could be read as prohibiting the Department of Justice from expending funds to enforce the mailability ban if an instance of noncompliance is referred to it by the Inspection Service or other law enforcement agency (a question on which we do not opine), any such restriction does not mean that the Postal Service should treat such advertising as being freely mailable, and the Postal Service would still conclude that such advertisements are not mailable pursuant to the CSA.

We hope that this information is helpful. Ultimately, considering the current state of federal law, we believe that whether to allow marijuana advertisements to be freely distributed through the U.S. Mail is a decision reserved to Congress, and based upon our analysis we have concluded that such decision is reflected in the provisions of the CSA.

Thank you for your interest in this matter.

Sincerely,



Thomas J. Marshall

cc: Megan J. Brennan
Postmaster General, Chief Executive Officer