



**The American Consumer Institute
Center for Citizen Research**

**Comments of American Consumer Institute Regarding Proposed Revisions to
Publication 52, Hazardous, Restricted, and Perishable Mail
Submitted to United States Postal Service
March 17, 2021**

The American Consumer Institute respectfully submits comments relating to potential changes to Publication 52, Hazardous, Restricted, and Perishable Mail that will prohibit the mailing of electronic nicotine delivery systems (ENDS).

The American Consumer Institute (ACI) is a 501(c)(3) non-partisan, educational, and public policy research organization, with the mission to identify, analyze, and project the interests of consumers in selected legislative and rulemaking proceedings in matters that affect the consumers.

Under the proposed rule, ENDS products would be reclassified as cigarettes under 18 U.S. Code § 1716E, meaning the United States Postal Service (USPS) cannot "accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains" ENDS products.¹ The proposed rule will broadly define ENDS products as "any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device. Examples include e-cigarettes, e-hookahs, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes."²

¹ 18 U.S. Code § 1716E- Tobacco Products as nonmailable. Available Online: <https://www.law.cornell.edu/uscode/text/18/1716E>.

² 39 CFR Part 113L Treatment of E-Cigarettes in the Mail. Available Online: <https://public-inspection.federalregister.gov/2021-03393.pdf>.

In ACI's view, restricting shipments of ENDS products within the United States, as outlined in the proposed rule, could have severe public health consequences.³ We are particularly concerned the proposed rule will deny consumers access to healthier alternatives and a proven smoking cessation product. This denial will undoubtedly lead to unnecessary poor health outcomes for millions of Americans. We are equally concerned the ban on mailing ENDS products will disproportionately harm those in rural communities who will no longer have access to these products, despite having higher rates of smokers than their urban counterparts.⁴ Finally, we are concerned that by classifying electronic cigarettes as cigarettes it would imply, despite scientific consensus stating otherwise, they are equally as dangerous to consumers.

We have divided our comments into the following sections:

- I. Electronic Cigarettes as a Healthier Alternative
- II. Effects on Rural Communities
- III. Conclusion

I. Electronic Cigarettes as a Healthier Alternative

Scientific studies have routinely shown electronic cigarettes, colloquially known as vapes, are healthier than traditional combustible products. A November 2020 study by researchers at California State University, the University of Kansas School of Medicine, Brown University, and the University of California's School of Medicine found when smokers in San Diego and Kansas City switched to vaping products, fewer cancer-causing pulmonary carcinogens were found in

³ Ibid.

⁴ Centers for Disease Control: "Tobacco Use by Geographic Region." <https://www.cdc.gov/tobacco/disparities/geographic/index.htm>; Kelly Buettner-Schmidt, Donald R. Miller, and Brody Maack, "Disparities in Rural Tobacco Use, Smoke Free Policies, and Tobacco Taxes." *Western Journal of Nursing Research*, February 17, 2019. Available Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6613179/>

their bodies when compared to those who continued smoking combustible cigarettes.⁵ This study reinforced the findings of Public Health England who estimated e-cigarettes are around 95% less harmful than conventional cigarettes.⁶

Electronic cigarettes' health benefits are also evident in the number of lives that could be saved if smokers switch to electronic cigarettes. In 2017, Georgetown University's Medical Center found "6.6 million cigarette smokers will live substantially longer if cigarette smoking is replaced by vaping over a ten-year period." In total, cigarette smokers who switch to e-cigarettes could live 86.7 million more years with policies that encourage cigarette smokers to switch completely to e-cigarettes.⁷ If the proposed rule moves ahead, the federal government will be denying access to these life extending alternatives.

The fewer carcinogens found in those who switched to electronic cigarettes combined with the number of lives that could be extended should highlight the importance of creating a friendlier regulatory environment, not one that restricts access.

Scientific studies have also shown ENDS products are effective smoking cessation aids for Americans looking to quit. In 2019, researchers led by Dr. Sara Kalkhoran found the use of electronic cigarettes increased the chances of smoking abstinence by 77% after two years.⁸ Comparatively, FDA-approved medication only had an abstinence rate between 30% and 44% after one year.⁹

⁵ Kim Pulvers, Nicole L. Nollen, Myra Rice, et al: "Effect of Pod e-Cigarettes vs Cigarettes on Carcinogen Exposure Among African American and Latinx Smokers: A Randomized Clinical Trial." *JAMA Network Open*, November 18, 2020. ;3(11):e2026324. doi:10.1001/jamanetworkopen.2020.26324.

⁶ Public Health England, "E-cigarettes around 95% less harmful than tobacco estimates landmark review," August 19, 2015.

<https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>.

⁷ Georgetown University Medical Center, "Tobacco Smokers Could Gain 86 Million Years of Life if they Switch to Vaping, Study Finds." October 2, 2017. https://gumc.georgetown.edu/news-release/tobacco_smokers_could_gain_86-million_years_of_life_if_they_switch_to_vaping_study_finds/

⁸ Sara Kalkhoran, MD, MAS, Yuchiao Chang, PhD, Nancy A Rigotti, MD, "Electronic Cigarette Use and Cigarette Abstinence Over 2 Years Among U.S. Smokers in the Population Assessment of Tobacco and Health Study." *Nicotine & Tobacco Research*, Volume 22, Issue 5, May 2020, p728–733.

⁹ William Deradorff, "Anti-Smoking Medications: Zyban and Chantix," *Spine Health*, April 2, 2008. <https://www.spine-health.com/wellness/stop-smoking/anti-smoking-medications-zyban-and-chantix>.

The high smoking abstinence rate of electronic cigarettes compared to FDA-approved products shows e-cigarettes provide smokers with a product that will give them the best chance of quitting and remaining smoke-free.

II. Effects on Rural Communities

Since USPS announced its proposed rule change in February 2021, private delivery companies also announced they would no longer ship ENDS products. UPS announced from April 5, 2021 they will prohibit the shipment of vape products,¹⁰ following rules already implemented by FedEx and DHL.¹¹ These policies, initiated through the USPS' proposed rule change, will disproportionately harm rural communities with higher smoking rates than urban communities. The prohibition on shipping vaping products means rural consumers, who do not have access to brick-and-mortar shops,¹² will face significant burdens when attempting to acquire products that are not only healthier but are also the most effective smoking cessation products.

III. Conclusion

It is the view of ACI that a prohibition on the mailing of ENDS products will inflict significant harm to American consumers. The rule risks denying consumers access to a less harmful alternative and a proven smoking cessation product. We also firmly believe that the proposed rule will disproportionately harm rural consumers as they have limited access to traditional brick-and-mortar stores. Rather than denying access to electronic cigarettes, ACI believes the

¹⁰ UPS, "Shipping Tobacco," date not provided. Available Online: <https://www.ups.com/us/en/help-center/packaging-and-supplies/special-care-shipments/tobacco.page#:~:text=UPS%20is%20prohibiting%20the%20shipment,for%20the%20consumption%20of%20nicotine>.

¹¹ Matt Rowland "UPS Joins USPS, FedEx, DHL in stopping delivery of vaping products by April 5." VAPES. February 21, 2021. Available Online: <https://www.vapes.com/blogs/news/ups-joins-usps-fedex-dhl-in-stopping-delivery-of-vaping-products-by-april-5#:~:text=%E2%80%9CWe%20prohibit%20the%20shipping%20of,FedEx%20or%20FedEx%20Office%20location>.

¹² Hongying Dai and Jianqiang Hao, "Geographic Density and proximity of vape shops to colleges in the USA." *Tobacco Control*, July 2017, Vol. 26 Issue 4, 379-385.

federal government should facilitate a regulatory environment that helps those who wish to quit, not imposing regulatory barriers that make a harmful product comparatively more accessible.

Thank you for the opportunity to submit comments regarding the proposed rule change.

Respectfully Submitted,

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