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Post Office Sidesteps Fray On Illicit Sales Of Cigarettes

By MICHAEL COOPER

ALBANY, May 26 — As they move to thwart the illegal trade of cigarettes over the Internet, state officials have joined colleagues from around the nation in persuading the major credit card companies to stop processing payments for online cigarette sales. Additionally, the state has enacted a law prohibiting the shipment of cigarettes to its residents and banned private carriers, like FedEx, from shipping cigarettes.

But as state officials fight illegal online cigarette sales, one operation is not falling into line — the United States Postal Service, which officials say delivers the bulk of illegally purchased cigarettes to New Yorkers.

The Postal Service, citing concerns about the privacy of the mail and wary of putting postal clerks in the position of deciding which packages to accept and which to reject, is resisting the growing calls that it stop shipping cigarettes.

Its stance is exasperating law enforcement officials. "It is outrageous that the federal government — through the United States Postal Service — is knowingly acting as the delivery arm for these criminal enterprises," New York's attorney general, Eliot Spitzer, said in a statement.

The role of the post office in shipping illegally sold cigarettes is also attracting attention across the nation. Last month the National Association of Attorneys General asked the Postal Service to "adopt a firm policy prohibiting transportation of packages that the carrier knows or reasonably should know contains cigarettes sold illegally on the Internet." In Oregon, an online cigarette seller was charged in January with unlawful distribution of cigarettes and racketeering; the post office was not charged but was named in the indictment as part of the racketeering enterprise. Congress has considered legislation that would ban the mailing of cigarettes.

Postal officials say that they are committed to fighting illegal activities conducted through the mail, but complain that their hands are tied. They note that Priority Mail, which officials say is most frequently used to ship cigarettes, cannot be inspected without a search warrant or the consent of either the sender or the recipient.

The post office's investigative arm, the Postal Inspection Service, has worked to stop illegal cigarette shipments in a number of cases, but has only about 1,970 inspectors in the whole country, charged with investigating everything from the anthrax mailings to all suspicious packages to the distribution of child pornography. And postal officials say that postal clerks cannot be expected to figure out what people are shipping, and whether cigarette retailers are

complying with obscure laws like the Jenkins Act, which requires cigarette sellers to keep lists of customers for tax collection purposes.

"Tobacco is a legal, marketable product," Mary Anne Gibbons, the Postal Service's general counsel, wrote last month in a response to the association of attorneys general. "It would be impracticable for postal acceptance clerks to make determinations on any given mailer's compliance with state excise or tax law or Jenkins Act filings."

But state officials reject this argument, pointing out that at least in New York State, public health laws prohibit direct sales of cigarettes by mail. They acknowledge that the state cannot bar the post office, a federal entity, from shipping cigarettes in New York, but say that since online merchants often violate

A reluctance to turn postal clerks into tobacco watchdogs.

tax laws, shipping their cigarettes violates federal mail fraud statutes and therefore should be stopped.

"Instead of complying with federal law, the Postal Service is taking a head-in-the-sand approach, by claiming that they have no idea what is in the packages being delivered — even if they are being mailed by Internet operators that sell nothing but cigarettes," Mr. Spitzer said in a statement. "That is an absurd argument that we would never accept from a private defendant."

And several law enforcement officials said that in small upstate communities like Salamanca, N.Y., which are dotted with smoke shops advertising the tax-free cigarettes sold from Indian reservations, the post office willingly accepts delivery of truckloads of cartons of cigarettes for delivery.

But Anthony Alverno, the post office's chief counsel for customer protection and privacy, said in an interview that the post office's research indicated that the smoke shops doing business in New York sold other items beside cigarettes, including "novelty items," so some

packages they ship might not be cigarettes. "We would need to get a search warrant to make the determination," he said.

The Postal Inspection Service joined other federal and local law enforcement agencies to seize 300,000 cartons of illegal cigarettes last November at Kennedy International Airport. Mr. Alverno said that blocking overseas shipments was easier, because they must pass through customs. He added that the Postal Service would continue to discuss civil or criminal actions that could be taken with law enforcement agencies.

Not just government officials, but also antismoking advocates are trying to stop the mailing of cigarettes. And some see signs of progress.

John F. Banzhaf III, the executive director of Action on Smoking and Health, an antismoking organization that has warned the Postal Service that it could face legal liability for shipping illegally purchased cigarettes, said that the service was finding itself increasingly isolated, especially since credit card companies stopped processing the payments for such sales earlier this year.

"It may be more trouble — both from a legal and public relations point of view — than the benefits of the revenue that comes in," he said.

Several online cigarette sellers shut down after the credit card companies stopped processing their transactions; others are struggling. One Web site, tobaccobymail.com, which says it is run from western New York, complains on its site that it is "perpetually targeted by the state of New York," and says that it is not bound by state or federal laws because it is owned and operated by the Seneca Nation of Indians.

The Web site says that it ships cigarettes by Priority Mail, that they are tax-free, and that the company will not share its customer lists with the government. But state officials say the company is flagrantly violating tax laws.

Mr. Spitzer said that the Postal Service should stop carrying illegally sold cigarettes. "The entire law enforcement community — attorneys general, the federal Bureau of Alcohol, Tobacco and Firearms, police officers, state tax officials, and even the Postal Inspection Service — is united in trying to stop these illegal sales," he said. "The postmaster general should be instructing the 'delivery side' of his office to join us in this effort, rather than facilitating illegal conduct."