

*Marshall*, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983-1984 benchmark revision process. Docket Number T-018 is available for public inspection and copying at the Docket Office of the U.S. Department of Labor, Room N-2625.

#### Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised North Carolina benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for North Carolina in accordance with the Court Order in *AFL-CIO v. Marshall*. Comments must be received on or before April 11, 1995, and be submitted in quadruplicate to the Docket Office, Docket No. T-015A, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Written submissions must be directed to the specific benchmarks proposed for North Carolina and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, Room N-2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

#### List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033))

Signed at Washington, DC, this 28th day of February 1995.

Joseph A. Dear,

*Assistant Secretary of Labor.*

[FR Doc. 95-5503 Filed 3-6-95; 8:45 am]

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## POSTAL SERVICE

### 39 CFR Part 111

#### Special Bulk Third-Class Eligibility Restrictions

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements provisions of Public Laws 103-123 and 103-329, the Treasury, Postal Service, and General Government Appropriations Acts for 1994 and 1995, respectively. The proposed rule is necessary to clarify and implement further restrictions on the use of special bulk third-class rates.

**DATES:** Comments must be received on or before April 6, 1995.

**ADDRESSES:** Written comments should be mailed or delivered to Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260-2419. Copies of all written comments will be available for inspection and photocopying from 9 a.m. to 4 p.m., Monday through Friday, in Room 6800 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ernest J. Collins, (202) 268-5316.

**SUPPLEMENTARY INFORMATION:** On October 28, 1993, the President signed into law Public Law 103-123, the Treasury, Postal Service, and General Government Appropriations Act for 1994. Title VII of the Act, the Revenue Forgone Reform Act, amended 39 U.S.C. 3626 by adding provisions to subsections (j) and new subsection (m) (1993 amendments). These sections add further restrictions on the use of special bulk third-class postage rates by qualified organizations. Specifically, the law makes certain types of advertisements, promotions, and offers, as well as some products, ineligible to be mailed at the special bulk third-class rates. The final rule implementing the new statutory restrictions was published by the Postal Service on May 5, 1994, with an implementation date of September 4, 1994. It was subsequently delayed indefinitely by notice in the Federal Register (59 FR 39967) on August 5, 1994.

On September 30, 1994, the President signed into law Public Law 103-329, the Treasury, Postal Service, and General Government Appropriations Act for 1995 (1994 amendment), amending provisions of Public Law 103-123. The amendment creates an exception to the 1993 amendments for advertisements printed in materials that meet the content requirements for periodical publications as prescribed by the Postal Service.

The 1993 amendments established new content-based restrictions on matter eligible for special bulk third-class rates. In order for material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service to qualify for mailing at the special bulk third-class rates, the sale of the product or the providing of the service must be substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. The determination whether a product or service is substantially related to an organization's purpose is to be made in accordance with standards established under the Internal Revenue Code. The amendments also added restrictions on the mailing of products at the special bulk third-class rates.

The 1994 amendment provides that advertisements mailed at the special bulk third-class rates need not meet the substantially related test if the material of which the advertisement is a part meets the content requirements of a periodical publication, as specified by the Postal Service. The 1994 amendment does not affect the restrictions on the mailing of products established in the 1993 amendments.

This proposal republishes for comment the rules adopted on May 5, 1994, with certain changes. The major change is the addition of new sections E370.5.4(d)(2) and 5.8 of the Domestic Mail Manual (DMM) that implement the new exception to the restrictions in the 1993 amendments. Specifically, the new rule provides that the 1993 amendments do not apply to advertisements for products or services that appear in third-class material meeting the content requirements for periodical publications. These content requirements are listed in DMM E370.5.8.

Other changes from the rules published May 5, 1994, include the following. Several sections in the DMM have been renumbered to accommodate the addition of new DMM E370.5.8; section 5.7(c) has been deleted. This provision excluded certain material in newsletters and other publications from the new advertising restrictions. Because the publications that were intended to benefit from the provision are among those that are expected to benefit from the new 1994 exception, this section has been deleted as unnecessary and potentially confusing. Products and services advertised in materials meeting the content requirements for a periodical

publication are available at the special bulk third-class rates regardless of whether their sale or provision is substantially related to the purposes of the qualified organization. (This proposed rule change does not affect the prohibition on mailing advertisements for affinity, credit, debit, or charge cards; insurance policies; and travel arrangements.) Also, the cost of a low-cost item has been adjusted for cost of living. Editorial changes, including the consolidation of provisions and deletion of unnecessary or redundant provisions, have been proposed in several sections for the purpose of clarity. These editorial changes are not intended to make substantive changes from the rules adopted on May 5, 1994.

As a reminder, mailers should remain aware that the restrictions in proposed DMM E370.5.4(d) do not apply unless the material to be mailed "advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of" a product or service. Other material is not prohibited under this restriction. This includes certain acknowledgments and "permissible references" described in current DMM E370.5.6 (which would be renumbered as DMM E370.5.7 under this proposal). It also includes public service announcements that are not considered to be advertising under postal standards. This policy is set forth in DMM E211.11.2; a new definition of public service announcements has recently been adopted by the Postal Service in the Federal Register ( 59 FR 10021) on February 23, 1995. The determination whether other material may come within the restrictions in DMM E370.5.4(d) must be made on a case-by-case basis. For example, the Postal Service has received inquiries concerning material containing prize offers. If the reader is not required to make a purchase in order to be eligible for a prize, the material is not considered to be an advertisement or other item subject to section DMM E370.5.4(d). The Postal Service understands that sweepstakes announcements generally involve such arrangements. Where an individual is only eligible for a prize or premium if a purchase is made, the matter would generally be considered under the provisions of DMM E370.5.4(d).

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by

reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In the Domestic Mail Manual, renumber sections E370.5.6; 5.7; 5.8, and 5.9 as E370.5.7; 5.9; 5.12, and 5.11, respectively.

3. In the Domestic Mail Manual, section E370 is amended by adding 5.4(d), 5.6, 5.8, and 5.10. The proposed text is as follows:

**E—Eligibility**

\* \* \* \* \*

**E370 Special (Nonprofit) Bulk Rates**

\* \* \* \* \*

**5.0 Eligible and Ineligible Matter**

\* \* \* \* \*

**5.4 Prohibitions**

Special bulk third-class rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of:

\* \* \* \* \*

[Add new 5.4d as follows:]

d. Any other product or service unless one of the following exceptions is met:

- (1) The sale of the product or the providing of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the special bulk third-class rates. The criteria in 5.6 are used to determine whether an advertisement, promotion, or offer for a product or service is for a substantially related product or service and, therefore, mailable at the special bulk third-class rates.
- (2) The product or service is advertised in third-class material meeting the prescribed content requirements for a periodical publication. The criteria in 5.8 are used to determine whether the third-class material meets the content requirements for a periodical publication.

[Change title of 5.5 as follows:]

**5.5 Definitions, Insurance**

\* \* \* \* \*

[Add new 5.6; renumber existing 5.6 as 5.7; and renumber existing 5.7 as 5.9.]

**5.6 Definitions, Substantially Related Advertising, Products**

For the standards in 5.4d:  
 a. To be substantially related, the sale of the product or the providing of the service must contribute importantly to the accomplishment of one or more of the qualifying purposes of the organization. This means that the sale of the product or providing of the service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the special bulk third-class rates is based. The sale of the product or providing of the service must have a causal relationship to the achievement of the exempt purposes (other than through the production of income) of the qualified organization. (The fact that income is produced from selling an advertised product or providing a service does not make such action a substantially related activity, even if the income will be used to accomplish the purpose or purposes of the qualified organization.)

b. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 U.S.C. 513(a) and (c) of the Internal Revenue Code are used to determine whether the sale or providing of an advertised product or service, whether sold or offered by the organization or by another party, is substantially related to the qualifying purposes of an organization. (Advertisements in third-class material that meets the content requirements for a periodical publication need not meet the substantially related standard to be mailable at the special bulk third-class rates. See 5.4(d)(2) and 5.8.)

(1) If the advertising material is for a product or service that is not substantially related, it is not mailable at the special bulk third-class rates.

(2) If an organization pays unrelated business income tax on the profits from the sale of a product or the providing of a service, that activity is by IRS definition not substantially related. The fact that an organization does not pay such tax, however, does not establish that the activity is substantially related because other criteria may exempt the organization from payment. Thus, the inclusion of an advertisement for a product or service in a mailpiece may disqualify the piece for special bulk third-class rates, even if the mailer does not pay unrelated business income tax on its sale.

(3) Third-party paid advertisements may be included in material mailed at the special bulk third-class rates if the products or services advertised are substantially related to one or more of

the purposes for which the organization is authorized to mail at special bulk third-class rates. However, if the material contains one or more advertisements that are not substantially related, the material is not eligible for the special rates, unless it is a publication that meets the content requirements described in 5.8 and is not disqualified from using the special bulk third-class rates under another provision.

c. Announcements of activities, e.g., bake sale, car wash, charity auction, oratorical contest, are considered substantially related if substantially all the work is conducted by the members or supporters of a qualified organization without compensation.

d. Advertisements for products and services, including products and services offered as prizes or premiums, are considered substantially related if the products and services are received by a qualified organization as gifts or contributions.

e. An advertisement, promotion, offer, or subscription order form for a periodical publication meeting the eligibility criteria in E211 and published by one of the types of nonprofit organizations listed in 2.0 is mailable at the special bulk third-class rates.

\* \* \* \* \*

[Renumber existing 5.8 as 5.12, renumber existing 5.9 as 5.11, and add new section 5.8 as follows:]

#### 5.8 Periodical Publication Content Requirements

Advertisements for products and services in materials that meet the content requirements for a periodical publication are mailable at the special bulk third-class rates. The material mailed must meet the following requirements:

a. Have a title. The title must be printed on the front cover page in a style and size of type that make it clearly distinguishable from other information on the front cover page.

b. Be formed of printed sheets. (It may not be reproduced by stencil, mimeograph, or hectograph processes. Reproduction by any other process is permitted.) Any style of type may be used.

c. Contain an identification statement on one of the first five pages of the publication that includes the following elements:

- (1) Title.
- (2) Issue date. The date may be omitted if it is on the front cover or cover page.
- (3) Statement of frequency showing how many issues are to be published each year and at what regular intervals

(daily; weekly; monthly; monthly except June; four times a year in June, August, September, and December; annually; etc.).

(4) Name and address of the nonprofit organization, including street number, street name, and ZIP+4 or 5-digit ZIP Code. The street name and number are optional if there is no letter carrier service.

(5) Issue number. Every issue of each publication is numbered consecutively in a series that may not be broken by assigning numbers to issues omitted. The issue number may be printed on the front or cover page instead of in the identification statement.

(6) ISSN or USPS number, if applicable.

(7) Subscription price, if applicable.

d. Consist of at least 25% nonadvertising matter in each issue. Advertising is defined in E211.11.0.

\* \* \* \* \*

[Renumber current 5.8 and 5.9 as 5.12 and 5.11, respectively; add new section 5.10 as follows:]

#### 5.10 Products Mailable at Special Bulk Third-Class Rates

The following products are mailable at special bulk third-class rates:

a. Low-cost items within the meaning of 26 U.S.C. 513(h)(2), Internal Revenue Code. At the beginning of each calendar year, the value of low-cost items is adjusted for cost of living. The standard established on January 1, 1995, provided that low-cost items have a cost of not more than \$6.56. The cost is the cost to the qualified nonprofit organization that mails the item or on whose behalf the item is mailed.

b. Items donated or contributed to the qualified organization. Such items do not have to meet the definition of low-cost as described in 5.10a.

c. A periodical publication (as defined in E211) of a nonprofit organization unless it is ineligible under the provisions of E370.5.0 to be mailed at the special bulk third-class rates.

\* \* \* \* \*

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

*Chief Counsel, Legislative.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 58

[AD-FRL-5157-7]

#### Proposed Requirements for Implementation Plans and Ambient Air Quality Surveillance for Sulfur Oxides (Sulfur Dioxide) National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** Today's action proposes implementation strategies for reducing short-term high concentration sulfur dioxide (SO<sub>2</sub>) emissions in the ambient air. The EPA is concerned that a segment of the asthmatic population may be at increased health risk when exposed to 5-minute peak concentrations of SO<sub>2</sub> in the ambient air while exercising. "Exercising" in this case can include walking up stairs or hills, as well as more strenuous activities.

In a related document published on November 15, 1994 in the Federal Register (part 50/53 document), EPA proposed not to revise the current 24-hour and annual primary national ambient air quality standards (NAAQS) for sulfur oxides (measured as SO<sub>2</sub>) while soliciting comment on the possible need to adopt additional regulatory measures to address short-term peak SO<sub>2</sub> exposures. The three alternatives under consideration include: Augmenting the implementation of the existing standards by focusing on those sources or source types likely to produce high 5-minute peak SO<sub>2</sub> concentrations; establishing a new regulatory program under the authority of section 303 of the Clean Air Act (Act) to supplement protection provided by the existing SO<sub>2</sub> NAAQS; and revising the existing SO<sub>2</sub> NAAQS by adding a new 5-minute NAAQS of 0.60 ppm SO<sub>2</sub>, 1 expected exceedance. All three regulatory alternatives would be implemented through a risk-based targeted strategy designed to protect the population at risk while minimizing the burden on the States for implementation.

This document presents EPA's proposed targeted implementation strategy and the associated regulatory requirements for implementing each of the regulatory measures under consideration. Also in this document, EPA solicits comments on appropriate changes to the new source review (NSR) programs as they relate to the 5-minute NAAQS regulatory alternative, and EPA