

permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining the same as a full-or part-time residence without the written permission of the District Commander is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Commander.

§ 327.23 Recreation use fees.

(a) In accordance with the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, the Corps of Engineers collects day use fees, special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) Where such fees are charged, the District Commander shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88-578, 78 Stat. 897, as amended (16 U.S.C. 460l-6a), is prohibited and is punishable by a fine of not more than \$100.

(c) Failure to pay authorized day use fees, and/or properly display applicable receipt, permit or pass is prohibited.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas. Fraudulent use of a Golden Age or Golden Access Passport is prohibited.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 111 and 1114 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with, attempt to kill or kill any civilian official or employee for the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference

directed against a Federal employee while carrying out the regulations in this part are violation of such regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to the regulations in this part shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other information deemed necessary for identification upon request of the Federal employee, when that employee is authorized by the District Commander to issue citations in the performance of the employee's official duties.

§ 327.25 Violations of rules and regulations.

(a) Any person who violates the provisions of the regulations in this part, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than \$5,000 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Commander shall have the authority to issue a citation for violation of the regulations in this part, requiring any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 111 or section 1114 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided under Federal or state law, as the case may be.

§ 327.26 State and local laws.

(a) Except as otherwise provided in this part or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

- (1) Operation and use of motor vehicles, vessels, and aircraft;
- (2) Hunting, fishing and trapping;
- (3) Use or possession of firearms or other weapons;
- (4) Civil disobedience and criminal acts;
- (5) Littering, sanitation and pollution; and

(6) Alcohol or other controlled substances.

(b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

[FR Doc. 00-3185 Filed 2-10-00; 8:45 am]

BILLING CODE 3710-41-P

POSTAL SERVICE

39 CFR Part 111

Substantially Related Eligibility Requirements for Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to clarify "substantially related" eligibility requirements for mail matter entered by authorized nonprofit customers.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202)268-5188.

SUPPLEMENTARY INFORMATION: On May 5, 1995, the Postal Service published a final rule in the *Federal Register* (60 FR 22270-22274) implementing provisions of Public Laws 103-123 and 103-329. Those laws restrict the eligibility of certain mailings for the Nonprofit Standard Mail rates to those containing advertisements for products and services that are substantially related to the nonprofit customer's qualifying purpose.

On two occasions in the early 1990s, Congress enacted laws that place limitations on the content of advertising matter eligible for the nonprofit rates. The first of these, codified to a large extent as 39 U.S.C. 3626(j)(1)(A-C), limited solicitations for credit cards and similar financial instruments, insurance, and travel. The second, codified as 39 U.S.C. 3626(j)(1)(D), limited solicitations for all other products and services. This notice concerns the second limitation, specifically the standards regarding substantially related advertisements.

The standards implementing 39 U.S.C. 3626(j)(1)(D) are contained in Domestic Mail Manual (DMM) section E670. Section E670.5.4d provides that the Nonprofit Standard Mail 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 any product or service (other than restricted advertisements for travel arrangements, insurance, and financial instruments such as credit cards) unless 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 Nonprofit Standard Mail rates.

The statute directs the Postal Service to 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 to determine whether the sale of an advertised product or service is substantially related to the qualifying purposes of an organization.

Based on the past several years of experience administering the standard, and considering requests from customers seeking guidance, and after further consultation with the IRS, the Postal Service believes it appropriate to refine and clarify its policy by way of revising the standards. The goal of these revisions is to promote certainty for customers and USPS personnel in making accurate determinations of an advertisement's eligibility for the preferred rates based on IRS standards in the tax code and its implementing regulations and court precedents.

The controlling tax law provides that if the products and services sold by a nonprofit organization are substantially related to the organization's exempt purposes, the income derived from their sale is exempt from the Unrelated Business Income Tax (UBIT). See 26 U.S.C. sections 511, 512, 513(a). Accordingly, the amendment at section E670.5.4.d.1 of the DMM explains that the Postal Service will accept mailings at the Nonprofit Standard Mail rate that contain advertisements for products or services so long as the authorized nonprofit organization certifies that the income derived from the sale of the products or services is exempt from UBIT and those products or services are substantially related to the organization's qualifying nonprofit purposes. See 39 U.S.C. section 3626(j)(1)(D)(i).

The certification, which is incorporated as part of the Nonprofit Standard Mail (A) postage statement, is shown here for emphasis. There is no substantive change. However, the mailer's certification of eligibility of substantially related advertisements is specifically emphasized. The Postal Service reserves the right to pursue appropriate remedies if the certification

is untrue. The revised certification reads as follows:

The signature of a mailer certifies that: (1) the mailing does not violate DMM E670; (2) the income derived from the sale of any products or services advertised in the mailing is not subject to the Unrelated Business Income Tax (UBIT) and any products and services advertised is substantially related to the nonprofit organization's authorized purpose within the meaning of 39 U.S.C. section 3626(j)(1)(D)(ii)(I) and 26 U.S.C. section 513(a); (3) only the mailer's matter is being mailed; (4) this is not a cooperative mailing with other persons or organizations that are not authorized to mail at Nonprofit Standard Mail rates at this office; (5) this mailing has not been undertaken by the mailer on behalf of or produced for another person or organization not authorized to mail at Nonprofit Standard Mail rates at this office; (6) this mailing, if made by a voting registration official, is required or authorized by the National Voter Registration Act of 1993; and (7) it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing, whether due to a finding that the mailing is cooperative or for other reasons. (If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the nonprofit mailer, and that both the nonprofit mailer and the agent will be liable for and agree to pay any deficiencies.)

Mailers are encouraged, but not required, to begin using this certification statement immediately. The revised nonprofit postage statements will be published in the Postal Bulletin and are posted on USPS.com. Copies have been given to presort software vendors to incorporate into future software releases. Mailers will be required to use this new certification statement at some point in the future, probably when the USPS implements new rates and revises and distributes a whole new set of postage statements. These amendments to the DMM are being published without a notice and comment provision in accordance with 5 U.S.C. 553(b)(B), since no customers are burdened by the rule change. Editorial revisions have been made for clarity and references to related tax law provisions, and regulations are included for customers' convenience in consulting them.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is 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. Revise part E670 of the Domestic Mail Manual to include additional section 5.6(f) and to read as follows:

E Eligibility

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E600 Standard Mail

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E670 Nonprofit Standard Mail

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5.0 ELIGIBLE AND INELIGIBLE MATTER

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5.4 Prohibitions and Restrictions

Nonprofit Standard Mail 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:

* * * * *

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

(1) The sale of the product or the provision 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 Nonprofit Standard Mail rates. The criteria in IRS regulations at 26 CFR section 1.513–1(d), supplemented by the definitions 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, eligible for Nonprofit Standard Mail rates.

(2) The product or service is advertised in Standard Mail (A) material meeting the prescribed content requirements for a periodical publication. The criteria in 5.8 are used to determine whether the Standard Mail (A) material meets the content requirements for a periodical publication.

* * * * *

5.6 Definitions, Substantially Related Advertising Products

For the standard in 5.4d:

a. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 USC 513(a) and (c) of the Internal Revenue Code are used to determine whether the sale or

provision 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 Standard Mail (A) material that meet the content requirements for a periodical publication need not meet the substantially related standard to be mailable at the Nonprofit Standard Mail rates. See 5.4d(2) and 5.8.)

b. To be substantially related, the sale of the product or the provision 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 Nonprofit Standard Mail 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 the production of income) of the authorized organization. (Income 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 authorized organization.) See 26 CFR section 1.513-1(d).

(1) If an organization pays Unrelated Business Income Tax (UBIT) on the income from the sale of a product or the provision of a service, that activity is by IRS definition not substantially related. See 26 U.S.C. section 512. 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. See 26 CFR section 1.513-1(e).

(2) Third-party paid advertisements may be included in material mailed at the Nonprofit Standard Mail 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 the Nonprofit Standard Mail rates. However, if the material contains one or more advertisements that are not substantially related, the material is not eligible for the Nonprofit Standard Mail rates, unless it is part of material that meets the content requirements described in 5.8 and is not disqualified from using the Nonprofit Standard Mail 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 an authorized organization without compensation. See 26 U.S.C. section 513(a)(1); 26 CFR section 1.513-1(e)(1).

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 an authorized organization as gifts or contribution. See 26 U.S.C. section 513(a)(3); 26 CFR section 1.513-1(e)(3).

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 Nonprofit Standard Mail rates.

f. Unless the mailing is ineligible for the Nonprofit Standard Mail rates for other reasons, mailings will be accepted at the Nonprofit Standard Mail rates upon certification that income derived from the sale of products or services advertised in the mailing is not subject to the Unrelated Business Income Tax (UBIT) described at 26 U.S.C. section 512, and that each of the products or services is substantially related to the nonprofit organization's qualifying purpose.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00-3157 Filed 2-10-00; 8:45 am]

BILLING CODE 7710-12-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD-1999-5915]

RIN 2133-AB39

Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is publishing this final rule to implement Title V of the Coast Guard Authorization Act of 1998. This final rule implements

regulations that, under certain circumstances, will waive the U.S.-build and other requirements of the Passenger Services Act and section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. This administrative process will improve the responsiveness of the Federal Government in meeting the needs of many vessel-operating small businesses.

DATES: The effective date of the final rule is February 11, 2000.

FOR FURTHER INFORMATION CONTACT: You may call Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, at (202) 366-0760, or you may write to him at the following address: Maritime Administration, MAR-832, Room 7201, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Title V of the Coast Guard Authorization Act of 1998 authorizes the Secretary of Transportation to grant waivers of certain requirements for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade. In order to carry out the provisions of the law, MARAD developed a procedure (i.e., this rule) for: accepting applications from the public, providing public notice of the intent to issue waivers to foreign built vessels for use in the coastwise passenger trade, a set of criteria to test the merits of the applications, a decision process, and a review and revocation process. The application process requires a \$300 non-refundable fee, an "adverse affect" assessment on the U.S.-flag shipping and vessel building community, and a requirement that the vessel must meet U.S. Coast Guard documentation standards. After the decision process is completed and the waiver is approved, MARAD will issue a waiver document that becomes a permanent part of the vessel's coastwise endorsement. The document will set limits on the vessel's geographic use and will require MARAD's prior approval for all significant changes in the vessel's operation. With regard to overall processing, MARAD has also prepared a revocation procedure for use if necessary and a review process where the Maritime Administrator may review the waiver granting and revocation decisions of the MARAD staff.

One portion of the law requires public notice prior to rulemaking. Accordingly, on July 8, 1999 MARAD published a 60-day notice in the **Federal Register** (64