

ACTION: Correction.

SUMMARY: On July 21, 1994, the National Labor Relations Board amended its administrative regulations (59 FR 31757) governing the standards of conduct and financial disclosure requirement of its employees of the Agency. Most of those regulations had been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government (OGE). The NLRB published the rule to repeal those portions of the provisions that were superseded by the executive branch-wide standards and to update cross-references in the current regulations that continued to be applicable. The NLRB is publishing this rule to correct amendatory instructions 4. and 5. and amendatory instruction 10. (59 FR 37158) of that amending rule.

EFFECTIVE DATE: The removal of § 100.106, the removal of § 100.201 of Subpart B, and the redesignation of § 100.123 as the new § 100.201 of Subpart B are effective July 21, 1994.

FOR MORE INFORMATION CONTACT:

Gloria Joseph, Director of Administration, National Labor Relations Board, Room 7109, 1099 14th Street NW., Washington, DC 20570-0001. (202-273-3890).

List of Subjects in 29 CFR Part 100

Administrative Regulations, Government employees, cooperation in audits and investigations, employee personal property loss claims, claims under the Federal Tort Claims Act, nondiscrimination on the basis of handicap in NLRB programs.

PART 100—[CORRECTED]

§ 100.103 through 100.106 [Removed]

1. On page 37158, in the third column, amendatory instructions 4. and 5. should read as follows:

4. and 5. Sections 100.103 through 100.106 are removed.

Subpart B—Cooperation in Audits and Investigations

2. On page 37158, in the third column, amendatory instruction 10. should read as follows:

10. § 100.201 of Subpart B is removed and § 100.123 is redesignated as the new § 100.201 of Subpart B and revised to read as follows:

Dated: Washington, DC, May 1, 1995.
By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 95-11078 Filed 5-4-95; 8:45 am]

BILLING CODE 7545-01-M

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of Public Laws 103-123 and 103-329 that further restrict the kinds of advertisements and products that are mailable at the special bulk third-class rates by authorized organizations.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ernest 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 subsection (j) as well as new subsection (m) (1993 amendments). These sections add further restrictions on the use of special bulk third-class postage rates by qualified organizations.

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 Postal Service published in the **Federal Register** (60 FR 12490-12492) on March 7, 1995, a proposal to amend the Domestic Mail Manual (DMM) to implement certain provisions of Public Laws 103-123 and 103-329. These provisions made certain types of matter ineligible to be mailed at the special bulk third-class postage rates, which are available for use by certain nonprofit organizations, political committees, and voting registration officials. The Postal Service requested comments by April 6, 1995.

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 (other than insurance, travel, or financial instruments, which were the subject of restrictions in previous legislation and rulemaking) 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 of 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 for 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.

The only products mailable at the special bulk third-class rates are low-cost products as defined under the Internal Revenue Code, items donated or contributed to the qualified organization, and periodical publications of authorized organizations. The Postal Service views the new provisions as supplementary to, rather than a change to or replacement for, existing restrictions on special-rate mailings. That is, mailings ineligible for the special rates under existing rules remain ineligible for these rates, regardless of whether they violate the new restrictions. Further, mailings that violate the new restrictions would not be eligible for the special rates, regardless of whether they would be eligible under existing rules.

As the Postal Service has pointed out in prior rulemakings, it should be recognized that the Postal Service has limited discretion on what may be mailed at the special rates. These historically subsidized rates are based on statutes that prescribe standards for who may mail at the special rates and what may be sent at those rates. The Postal Service views its role as the administrator of these laws. Accordingly, its goal in this rulemaking

is to promulgate rules implementing Public Laws 103-123 and 103-329.

A final rule was published in the **Federal Register** (59 FR 23158-23164) on May 5, 1994, to implement provisions of Public Law 103-123, with an effective date of September 4, 1994. That final rule was subsequently indefinitely delayed by notice in the **Federal Register** (59 FR 39967) on August 5, 1994. This final rule adopted in this notice carries forth most of the same rules that were to have been effective September 4, 1994, while implementing the new exception for advertisements provided by Public Law 103-329. The exception specifies that advertisements in material that meets the content requirements for a periodical publication, as specified by the Postal Service, need not be substantially related to the purpose(s) of the authorized organization to qualify for mailing at the special bulk third-class rates.

As explained below, the new rules deny the use of special bulk third-class rates for mailpieces that do not meet the content requirements for a periodical publication as prescribed by the Postal Service and contain one or more advertisements for products or services that are not "substantially related" to a purpose on which the organization's authorization to mail at the special bulk third-class rates is based. This prohibition applies regardless of the inclusion of other advertisements that do qualify for mailing at those rates. Products and services advertised in mailpieces that meet the content requirements for a periodical publication need not be substantially related to a purpose of the authorized organization to be mailable at the special bulk third-class rates. These new rules are in addition to, and are designed to be compatible with, existing prohibitions on the use of special bulk third-class rates for improper cooperative mailings and for certain advertising of financial instruments, insurance policies, and travel arrangements. Restrictions on advertisements for the last three types of products or services are not subject to the exceptions adopted in this rulemaking.

Material that is not considered to be advertising is not prohibited under these restrictions. This material includes certain acknowledgments and "permissible references" described in current DMM E370.5.6 (which will be renumbered as DMM E370.5.7). 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. The

determination of whether other material comes within the restrictions in new 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 otherwise subject to DMM E370.5.4(d). The Postal Service understands that sweepstakes announcements usually include such arrangements. When an individual is eligible for a prize or premium only if a purchase is made, the matter would generally be considered under the provisions of DMM E370.5.4(d).

Evaluation of Comments Received

Written comments were received from six associations and organizations. One favorable comment recommended adoption of the proposed rule in its entirety. Three other comments generally favored adoption of the proposed rules, with specific objections to only one subsection. Two comments expressed broader concerns with the proposal. After considering all six comments, the Postal Service has determined to adopt the rule as proposed except for minor changes described below.

Although two comments did not object to the four general content requirements for a periodical publication in proposed DMM E370.5.8 (i.e., title, printed sheets, identification statement, and nonadvertising content) or to the remainder of the proposed rules, they opposed the requirement for a frequency statement in the identification statement. The comments stated that this additional rule creates a frequency requirement whereas the restrictions adopted by Congress call for eligibility to be based on the content requirements for periodical publications, not periodicity or other requirements. The comments pointed out that it is important to recognize the financial and staffing resource constraints under which many nonprofit organizations operate. They stated that it is not uncommon for an organization's mailing to be prepared, printed, and presented to the Postal Service for delivery after a volunteer has found the time to write the material, or after the next grant or donation has been received to fund its production, or both. As an alternative to eliminating the requirement for a frequency statement in the third-class publication's identification statement, one of the comments suggested that mailers be

allowed to state the frequency as "irregular."

The Postal Service agrees with the statements of these two comments that the exception created in the 1994 legislation does not establish a frequency requirement for matter meeting the content requirements for a periodical publication. The Postal Service proposal is based on the need to implement a statute that requires a listing of the content requirements for periodicals. Identification statements are required to be printed in second-class periodicals, and frequency statements are in the identification statements. However, unlike second-class publications, publications eligible for mailing at the special bulk third-class rates are not required to be issued according to a regular frequency or to have a minimum number of issues produced each year. The rule simply requires mailers to provide a description of the publication frequency in the identification statement. If the term "irregular," or a similar term, best describes the intended frequency, then that description satisfies DMM E370.5.8. As a further note, if the frequency changes, the new frequency should be included in the identification statement when the publication is again published; no separate notice need be provided to the Postal Service. Further, the Postal Service will not monitor the publication to ensure that the stated frequency is met and will not impose sanctions if it is not followed, as might occur if a frequency requirement were imposed. Accordingly, in view of the comments received, the Postal Service has added "irregularly" as an example of a statement of frequency in DMM 5.8c(3). It has also changed the requirement in that subsection from "Statement of frequency showing how many issues are to be published each year and at what regular intervals (daily; weekly; monthly except June; four times a year in June, August, September, and December; annually; etc.)" to "Statement of frequency showing when issues are to be published (daily; weekly; monthly; monthly except June; four times a year in June, August, September, and December; annually; irregularly, etc.)" to eliminate confusion as to what constitutes an acceptable statement of frequency.

Two comments reminded the Postal Service of its commitment to publish and distribute a detailed handbook to be made available to interested mailers, and these comments asked that this handbook include explanations concerning specific types of mailings, particularly if such explanations could not be added directly to the DMM. As

previously announced, the Postal Service plans to publish a handbook that will contain information regarding special bulk third-class mailings. The handbook will combine current Publications 417 and 417-A and will contain information regarding application procedures, qualifying organizations, mailing at other post offices, and cooperative mailings, as well as material concerning the new content-based restrictions (advertisements, products, premiums, sweepstakes, etc.). Although the handbook will contain helpful information to assist authorized organizations to determine whether their materials qualify for mailing at the special bulk third-class rates, the Domestic Mail Manual will contain the rules governing the kinds of materials that qualify for mailing at these rates. The handbook will provide information and examples that will be helpful in applying the rules in the Domestic Mail Manual. Plans are to distribute the handbook as far in advance as possible of the effective date of this final rule. A notice will be published in the Postal Bulletin when the handbook is available for distribution.

One comment stated that requester publications should be allowed to qualify for special second-class rates. The comment also suggested that the Postal Service explore with interested parties the adoption of rules to accomplish this goal. This comment is beyond the scope of this rulemaking.

One comment stated that the proposed rule neither distinguishes between premiums and products nor between advertising and solicitations for donations. This comment argues that solicitations by nonprofit organizations that seek donations and offer premiums to contributors should not be considered advertising. The provision questioned by the comment was among the provisions originally adopted on May 5, 1994, and is carried forward in the rules adopted with this final rule. The Postal Service specifically addressed the issue raised by this comment, which concerns "back-end premiums" in that earlier rulemaking, 59 FR 23162, and the Postal Service continues to believe that the conclusions reached at that time are sound. The definition for advertising as set forth in DMM E211.11.0 states that the term includes all material for the publication of which a valuable consideration is paid, accepted, or promised that calls attention to something to get people to buy it, sell it, seek it, or support it. The Postal Service, therefore, believes that a mailpiece containing information promising to furnish a product or

premium in return for making a donation is an advertisement for the product or premium. Consequently, the advertisement must comply with one of the applicable exceptions in order to be eligible for the special rates, i.e., be substantially related to the purposes of the authorized organization (which includes advertisements for items received by the authorized organization as a donation or gift), or be in material that meets the content requirements for a periodical publication. The Postal Service further notes that the question of whether the back-end premium itself may be mailable at the special rates is subject to a different set of rules: the product restrictions set forth in DMM E370.5.10. Additionally, it should not be forgotten that the new restrictions on advertising affect only material considered to be advertisements. Accordingly, a mailpiece of an authorized organization that contains only a donation solicitation for that organization will not be considered an advertisement subject to the new restrictions.

The same comment noted its agreement with statements in the Supplementary Information portion of the proposed rules concerning treatment of sweepstakes and public service announcements (PSAs), and urged that these be incorporated into the rules. Postal policy concerning PSAs is contained in DMM E211.11.0 (see 60 FR 10021, 10029, February 23, 1995). The treatment of sweepstakes mailings is an application of the general rules published in this notice. These are necessarily "regulations of a general character," *United States Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114, 133 (1981). It is impractical for the Postal Service to anticipate and address specific examples of mailings in these rules. Nevertheless, detailed information about products, premiums, donation solicitations, and advertisements will be addressed in the upcoming handbook to assist customers in determining whether these materials are mailable at the special bulk third-class rates.

One comment stated that the proposed rules "create a pseudo-periodical publication category in third-class." It stated that periodical publications are defined in DMM E200; that clear and precise content requirements are listed in DMM E212.1.3, E212.3.1, and E212.4.1; that Congress intended that the provisions of DMM E212.1.3a, 1.3c, and 1.3d serve as the content restrictions affecting special bulk third-class mail containing space advertising; and that the law does not

require that a special bulk third-class mailpiece be a periodical publication.

The Postal Service believes that it is in agreement with the comment on two essential points: (1) That the statutory exception is not limited to periodicals, but to materials that meet the content requirements for periodicals; and (2) that the test for the Postal Service is to adopt regulations to implement the statutory language established by Congress. If the statute requires the creation of a "pseudo-periodical" category, that matter is beyond the authority of the Postal Service, whose role is limited to the implementation of the statute. Although the comment stated a belief that DMM E212.2.3, E212.3.1, and E212.4.1 create content requirements, it did not urge that they be included in the final rule. Instead, the comment indicated a belief that Congress intended DMM E212.1.3a, 1.3c, and 1.3d to serve as the restrictions, although it did not cite any direct evidence of such congressional intent. These rules establish advertising restrictions only for second-class eligibility purposes. The proposed rule contains an advertising restriction in DMM E370.5.8d. The proposed rule also establishes other criteria such as the need for a title, printed sheets, and an identification statement. Because these are all items that must be contained in the mailpiece, the Postal Service believes, contrary to the assertions of this comment, that these criteria are fairly described as content requirements for periodical publications. The Postal Service believes that proposed DMM E370.5.8 contained reasonable, objective criteria to implement a statute requiring a listing of the content requirements for periodicals and, therefore, adopts the proposed rule.

One comment stated that the proposed rule would allow organizations to use special bulk third-class postal rates to compete unfairly with for-profit organizations. This comment generally appears to be opposed to the use of special bulk third-class rates for advertising matter and asserts that authorized organizations' mailings should be restricted to nonadvertising and non-income-generating endeavors. The comment also urged, apparently as an alternative position, that the rules be reviewed to create stricter limits against the mailing of advertisements at the special rates.

The comment that authorized organizations should be restricted to nonadvertising and non-income-generating endeavors goes beyond the scope of the statutes and the authority of the Postal Service. The kinds of organizations that may mail at the

special bulk third-class rates and what they may mail at those rates are established by statute. Although these laws set forth restrictions against the entry of advertisements at the special rates, they also provide exceptions to the restrictions. The Postal Service is not permitted to change provisions of the statutes by rulemaking as urged by the comment. The same comment also asked that the rules be revised to limit advertisements mailed at the special bulk third-class rates to those advertisements that are 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, which it describes as the "current rule." In fact, this provision was part of the final rule published on May 4, 1994, to implement the 1993 amendments. As described above, this provision was subsequently indefinitely delayed, but it is adopted as part of this final rule. The comment essentially requested the Postal Service to ignore the additional exception created in the 1994 amendments. This would be beyond the authority of the Postal Service for reasons explained above. The same comment also argued that the proposed rule creates an overly broad definition of periodical publication in DMM E370.5.8; the comment would limit the new exception to "legitimate nonprofit publications" and change proposed DMM E370.5.8d to require the publication to contain at least 75% nonadvertising matter. The exception in the 1994 amendments is not limited to "periodicals"; it refers to material meeting the content requirement for periodical publications. Moreover, the proposed 75% threshold is inconsistent with existing content requirements.

In addition to the changes to the proposed rule described above, the following additional minor changes have been made in the final rule. The phrase "qualified organization," which describes organizations authorized to mail at the special bulk third-class rates, has been changed to "an authorized organization" in DMM 5.6c and 5.6d. DMM 5.6b(3) has been revised to clarify that the exception in the 1994 amendment applies to material that meets the content requirements for periodicals rather than solely to "publications." Finally, the requirement for inclusion of a USPS number in DMM 5.8c(6) has been eliminated since such a number would ordinarily appear only in matter entered as second-class mail.

List of Subjects in 39 CFR Part 111

Postal Service.

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).

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; add new E370.5.4(d), 5.6, 5.8, and 5.10 as follows:

E—Eligibility

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E370 Special (Nonprofit) Bulk Rates

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5.0 ELIGIBLE AND INELIGIBLE MATTER

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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

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[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 authorized 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 authorized 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 part of material 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 an authorized 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 an authorized 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 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 when issues are to be published (daily;

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

(4) Name and address of the authorized organization, including street number, street name, and ZIP+4 or 5-digit ZIP Code. The street number and street name 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) International Standard Serial Number (ISSN), 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.

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[Renumber current 5.8 and 5.9 as 5.12 and 5.11, respectively; add new 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 authorized 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 a low-cost item as described in 5.10a.

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

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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. 95-11152 Filed 5-4-95; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO-17-1-6023A; FRL-5197-7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document takes final action to approve the State Implementation Plan (SIP) submitted by the state of Missouri for the purpose of bringing about the attainment of the National Ambient Air Quality Standard (NAAQS) for lead. The SIP was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary lead smelter in Herculaneum, Missouri (Doe Run-Herculaneum).

DATES: This action will be effective July 5, 1995 unless by June 5, 1995 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551-7877.

SUPPLEMENTARY INFORMATION:

I. Background

On June 3, 1986, EPA issued a call for a revision to the Missouri SIP in response to violations of the NAAQS for lead near the Doe Run primary lead smelter in Herculaneum, Missouri. The state submitted an SIP revision on September 6, 1990, with additional materials submitted on May 8, 1991. After the state submitted the SIP, but before EPA acted on the state's submission, EPA promulgated a nonattainment designation for the area in the vicinity of Doe Run-Herculaneum under section 107(d) of the Clean Air Act (CAA), as amended. The designation was published on November 6, 1991 (56 FR 56694), and became effective on January 6, 1992.

As a result of EPA's promulgation of the nonattainment designation, the Part D requirements of the CAA became applicable to the Missouri SIP revision for Doe Run-Herculaneum. EPA granted limited approval for Missouri's 1990 SIP