

sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(e) *Examples.* The following examples illustrate the determination of the attained age of the insured for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable. The examples are as follows:

*Example 1.* (i) X was born on May 1, 1947. X became 60 years old on May 1, 2007. On January 1, 2008, X purchases from IC a contract insuring X's life. January 1 is the contract anniversary date for all future years. IC determines X's annual premiums on an age-last-birthday basis. Based on the method used by IC to determine age, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on.

(ii) Section 1.7702-2(b)(1) permits the determination of attained age under either of two alternative approaches. Section 1.7702-2(b)(1)(i) provides that, if a contract insures the life of a single insured individual, the attained age may be determined by reference to the individual's actual birthday as of the date of determination. Under this provision, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Alternatively, § 1.7702-2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age as of that date. If IC determines X's attained age under § 1.7702-2(b)(1)(ii), X likewise has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Whichever provision IC uses to determine X's attained age must be used consistently from year to year for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

*Example 2.* (i) The facts are the same as in *Example 1* except that, under the contract, X's annual premiums are determined on an age-nearest-birthday basis. X's nearest birthday to January 1, 2008, is May 1, 2008, when X will become 61 years old. Based on the method used by IC to determine age, X has an attained age of 61 for the first contract year, 62 for the second contract year, and so on.

(ii) Section 1.7702-2(b)(1) permits the determination of attained age under either of two alternative approaches. Section 1.7702-2(b)(1)(i) provides that, if a contract insures the life of a single insured individual, the attained age may be determined by reference to the individual's actual birthday as of the date of determination. Under this provision, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Alternatively, § 1.7702-2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age as of that date. If IC determines X's attained age under § 1.7702-2(b)(1)(ii), X has an attained age of 61 for the first contract year, 62 for the second contract year, and so on. Whichever provision IC uses to determine X's attained age must be used

consistently from year to year for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

*Example 3.* (i) The facts are the same as in *Example 1* except that the face amount of the contract is increased on May 15, 2011. During the contract year beginning January 1, 2011, the age assumed under the contract on an age-last-birthday basis is 63 years. However, X has an actual age of 64 as of the date the face amount of the contract is increased.

(ii) Section 1.7702-2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age. Section 1.7702-2(b)(2) provides that, once determined under paragraph (b)(1) of this section, the attained age with respect to an individual insured under a contract changes annually. Accordingly, X continues to be 63 years old throughout the contract year beginning January 1, 2011, for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

*Example 4.* (i) The facts are the same as in *Example 1* except that in addition to X (born in 1947), the insurance contract also insures the life of Y, born on September 1, 1942. The death benefit will be paid when the second of the two insureds dies.

(ii) Section 1.7702-2(c)(1) provides that if a life insurance contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying § 1.7702-2(b) as if the youngest individual were the only insured under the contract. Because X is younger than Y, the attained age of X must be used for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

*Example 5.* (i) The facts are the same as *Example 4* except that X (the younger of the two insureds) dies in 2012. After X's death, both the cash value and mortality charges of the life insurance contract are adjusted to take into account only the life of Y.

(ii) Section 1.7702-2(c)(1) provides that if a life insurance contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying § 1.7702-2(b) as if the youngest individual were the only insured under the contract. Paragraph (c)(2) of this section provides that if both the cash value and future mortality charges under a contract change by reason of the death of an insured to no longer take into account the attained age of the deceased insured, the youngest surviving insured is thereafter treated as the only insured under the contract. Because both the cash value and mortality charges are adjusted after X's death to take into account only the life of Y, only the attained age of Y is taken into account after X's death for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

*Example 6.* (i) The facts are the same as *Example 1* except that in addition to X (born in 1947), the insurance contract also insures the life of Z, born on September 1, 1952. The death benefit will be paid when the first of the two insureds dies.

(ii) Section 1.7702-2(d) provides that if a life insurance contract insures the lives of more than one individual on a first-to-die basis, the attained age of the insured is determined by applying § 1.7702-2(b) as if the oldest individual were the only insured under the contract. Because X is older than Z, the attained age of X must be used for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(f) *Effective dates*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, these regulations apply to all life insurance contracts that are either—

(i) Issued after December 31, 2008; or  
(ii) Issued on or after October 1, 2007 and based upon the 2001 CSO tables.

(2) *Contracts issued before the general effective date.* Pursuant to section 7805(b)(7), a taxpayer may apply these regulations retroactively for contracts issued before October 1, 2007, provided that the taxpayer does not later determine qualification of those contracts in a manner that is inconsistent with these regulations.

**Deborah M. Nolan,**

*Acting Deputy Commissioner for Services and Enforcement.*

Approved: September 6, 2006.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

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## POSTAL SERVICE

### 39 CFR Parts 952, 953, and 964

#### Rules of Practice in Proceedings Relative to False Representation and Lottery Cases, Determinations of Nonmailability and Disposition of Mail Withheld From Delivery: Changes in Responsibility for Litigation

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service™ is transferring responsibility for representation of the Postal Service in certain consumer protection administrative actions before the Judicial Officer Department from the Office of the General Counsel to the Inspection Service Office of Counsel.

**DATES:** Effective Date: September 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Diane Mego, Staff Counsel, Judicial Office, 703-812-1905.

**SUPPLEMENTARY INFORMATION:** Administrative adjudications involving false representation, illegal lotteries, and

false and fictitious names or addresses have been brought before the Postal Service Judicial Office Department by attorneys assigned to the Office of General Counsel, with the inspector-attorneys serving as co-counsel. These matters will now be brought before the judicial officer by representatives assigned to the Inspection Service Office of Counsel. In addition, the Inspection Service Office of Counsel will also assume responsibility for representation of the Postal Service in appeals of determinations of nonmailability arising in connection with illegal lottery materials and fraudulent payment instruments identified at ports of entry into the United States by Customs and Border Protection agents. The Office of General Counsel will, however, continue to represent the Postal Service in mailability proceedings arising from appeals of decisions of the Pricing and Classification Service Center.

#### **List of Subjects in 39 CFR Parts 952, 953 and 964**

Administrative practice and procedure, Fraud, Lotteries, Postal Service.

■ For the reasons set out in this document, the Postal Service amends 39 CFR parts 952, 953 and 964 as set forth below.

#### **PART 952—[AMENDED]**

■ 1. The authority citation for part 952 continues to read as follows:

**Authority:** 39 U.S.C. 204, 401, 3005, 3012, 3016.

##### **§ 952.5 [Amended]**

■ 2. In § 952.5, in the first sentence remove the words “General Counsel of the Postal Service or his designated representative” and add in their place the words “the Chief Postal Inspector or his or her designated representative.” In the last sentence of the first paragraph remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.”

##### **§ 952.29 [Amended]**

■ 3. In § 952.29, in the second sentence remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.”

##### **§ 952.30 [Amended]**

■ 4. In § 952.30, in the first sentence remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.”

#### **PART 953—[AMENDED]**

■ 5. The authority citation for 39 CFR part 953 continues to read as follows:

**Authority:** 39 U.S.C. 204, 401.

##### **§ 953.3 [Amended]**

■ 6. In § 953.3, in § 953.3(e) add the words “or Chief Postal Inspector’s or his or her designee’s reply” after the words “General Counsel’s.”

##### **§ 953.4 [Amended]**

■ 7. Amend § 953.4 as follows:

■ A. In paragraph (a) introductory text, add the words “or Chief Postal Inspector’s or his or her designee’s” after the words “General Counsel’s.”

■ B. In paragraph (a)(2)(i) add the words “or the Chief Postal Inspector or his or her designee” after the words “General Counsel.”

■ C. In paragraph (b), in the first sentence add the words “or the Chief Postal Inspector or his or her designee” after the words “General Counsel” and in the second sentence add the words “or the Chief Postal Inspector’s or his or her designee’s” after the words “General Counsel’s.”

■ D. In paragraph (c), add the words “, the Chief Postal Inspector, or his or her designee,” after the words “General Counsel.”

##### **§ 953.7 [Amended]**

■ 8. In § 953.7 [Amended], in the first sentence add the words “or the Chief Postal Inspector or his or her designee” after the words “General Counsel.” In the second sentence add the words “or the Chief Postal Inspector or his or her designee” after the words “General Counsel.”

##### **§ 953.16 [Amended]**

■ 9. In § 953.16 in the third sentence add the words “or Chief Postal Inspector or his or her designee” after the words “General Counsel.” In the fifth sentence, add the words “or Chief Postal Inspector or his or her designee” after the words “General Counsel.”

#### **PART 964—[AMENDED]**

■ 10. The authority citation for 39 CFR part 964 continues to read as follows:

**Authority:** 39 U.S.C. 204, 401, 3003, 3004.

■ 11. Amend § 964.3 as follows:

##### **§ 964.3 [Amended]**

■ A. In paragraph (a), in the fifth sentence remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.” In the last sentence, remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.”

■ B. In paragraph (b), the last sentence, remove the words “General Counsel”

and add in their place the words “Chief Postal Inspector or his or her designee.”

■ C. In paragraph (c), remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.”

■ D. In paragraph (d), remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.”

##### **§ 964.20 [Amended]**

■ 12. In § 964.20, remove the words “General Counsel” and add in their place the words “Chief Postal Inspector or his or her designee.”

**Stanley F. Mires**

*Chief Counsel, Legislative and Policy.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 62**

[R01–OAR–2006–0668; FRL–8219–2]

#### **Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the Sections 111(d) and 129 negative declaration submitted by the Vermont Department of Environmental Conservation (VT DEC) on June 30, 2006. This negative declaration adequately certifies that there are no existing “other solid waste incineration units” (OSWIs) located within the boundaries of the State of Vermont. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (e.g., OSWIs). The State of Vermont submitted this negative declaration in lieu of a state control plan.

**DATES:** This direct final rule is effective on November 13, 2006 without further notice unless EPA receives significant adverse comment by October 13, 2006. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–