

testimony or the production of documents, agency counsel will so inform the employee and the party who submitted the subpoena or made the request.

(2) If, despite the determination of the agency counsel that testimony should not be given and/or documents not be produced, a court of competent jurisdiction or other appropriate authority orders the employee or former employee to testify and/or produce documents, the employee shall notify agency counsel of such order.

(i) If agency counsel determines that no further legal review of, or challenge to, the order will be sought, the employee or former employee shall comply with the order.

(ii) If agency counsel determines to challenge the order, or that further legal review is necessary, the employee or former employee should not comply with the order. Where necessary, the employee should appear at the time and place set forth in the subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this subpart and respectfully inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony and/or produce documents. If the legal tribunal rules that the subpoena must be complied with, the employee shall respectfully decline to comply, citing this section and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 1.12 Regulations not applicable to official request.

The regulations in this part shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that granting a particular request would be in violation of law or inimical to the public interest. Cases of doubt should be referred for decision to agency counsel (as defined in § 1.11(b)(1)).

Dated: August 23, 2004.

Arnold I. Havens,
General Counsel.

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POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Material

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts an amendment to *Domestic Mail Manual* standards governing insurance advertising in Nonprofit Standard Mail. The amendment sets forth guidelines for determining whether the coverage provided by an insurance policy offered by an authorized nonprofit organization to its members is not generally otherwise commercially available.

DATES: Effective September 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, Mailing Standards, United States Postal Service, 202-268-7264.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on June 15, 2004 (69 FR 33341), the Postal Service proposed an amendment to *Domestic Mail Manual* (DMM) E670.5.5, which provides guidelines for determining whether insurance solicitations are eligible to be mailed at Nonprofit Standard Mail rates ("nonprofit rates"). The Postal Service has determined to adopt the proposed amendment. The change sets forth additional circumstances where the coverage provided by a general type of insurance, such as homeowner's, property, casualty, marine, and professional liability, would be considered not generally otherwise commercially available and, accordingly, mail promoting that coverage would be eligible to be mailed at Nonprofit Standard Mail rates.

Mailings permitted at nonprofit rates according to the policies in effect since 1991 will continue to be eligible for the nonprofit rates. These include, as discussed in the proposal, material promoting charitable gift annuities and material promoting insurance to a target group that does not otherwise have a source to obtain that type of coverage. The change amends the DMM to clarify that section E670.5.5 does not restrict the use of the nonprofit rates for mailings of an authorized fraternal benefit society or any other nonprofit organization when the material advertises, promotes, or offers insurance that is underwritten by the nonprofit organization itself. Nor does it restrict the use of the nonprofit rates for mailings of an authorized organization's material that advertises, promotes, or offers insurance, if the coverage is provided or promoted by the nonprofit organization to its members, donors, supporters, or beneficiaries in such a way that those parties may make tax-deductible donations to the organization of their proportional shares of income in excess of costs that the nonprofit organization receives from the purchase

of the coverage by its members, donors, supporters, or beneficiaries. The changes take into account court rulings, the Postal Service Appropriations Act of 1991, and related legislative history.

As explained in the proposal, mailings that are ineligible for Nonprofit Standard Mail rates under the cooperative mail rule or other standards remain ineligible for nonprofit rates, regardless whether they violate the amended standards related to insurance. Moreover, mailers continue to bear the burden to substantiate that mailings qualify for nonprofit rates, and may be asked to provide evidence to support eligibility for those rates before a mailing is accepted.

The Postal Service received one comment concerning its proposal. This comment supported the amendments proposed by the Postal Service.

Accordingly, for the reasons explained here and in the notice proposing the amended standard, the Postal Service adopts the rule as proposed.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, 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, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

■ 2. Revise the *Domestic Mail Manual* (DMM) as set forth below:

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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5.5 Definitions, Insurance

[Revise 5.5 to read as follows:]

For the standard in 5.4b:

a. Except as specified in 5.5c, the phrase *not generally otherwise commercially available* applies to the actual coverage stated in an insurance policy, without regard to the amount of the premiums, the underwriting practices, and the financial condition of the insurer. When comparisons are made with other policies, consideration is given to coverage benefits, limitations, and exclusions, and to the

availability of coverage to the targeted recipients. When insurance policy coverages are compared to determine whether coverage in a policy offered by an organization is not generally otherwise commercially available, the comparison is based on the specific characteristics of the mailpiece recipients (e.g., geographic location or demographics).

b. Except as specified in 5.5c, the types of insurance considered generally otherwise commercially available include, but are not limited to, homeowner's, property, casualty, marine, professional liability (including malpractice), travel, health, life, airplane, automobile, truck, motorhome, motorbike, motorcycle, boat, accidental death, accidental dismemberment, Medicare supplement (Medigap), catastrophic care, nursing home, and hospital indemnity insurance.

c. Coverage is considered not generally otherwise commercially available if either of the following conditions applies:

(1) The coverage is provided by the nonprofit organization itself (*i.e.*, the nonprofit organization is the insurer).

(2) The coverage is provided or promoted by the nonprofit organization in a mailing to its members, donors, supporters, or beneficiaries in such a way that the members, donors, supporters, or beneficiaries may make tax-deductible donations to the nonprofit organization of their proportional shares of any income in excess of costs that the nonprofit organization receives from the purchase of the coverage by its members, donors, supporters, or beneficiaries.

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An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04-20185 Filed 9-3-04; 8:45 am]

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POSTAL SERVICE

39 CFR Parts 310 and 320

Restrictions on Private Carriage of Letters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service regulations on enforcement and suspension of the Private Express Statutes to correct obsolete addresses.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Stanley F. Mires, (202) 268-2958.

SUPPLEMENTARY INFORMATION:

Amendment of parts 310 and 320 is necessary to correct the addresses for inquiries and other correspondence regarding enforcement of the Private Express Statutes.

List of Subjects in 39 CFR Parts 310 and 320

Advertising; Computer technology.

■ For the reasons set forth above, the Postal Service amends 39 CFR Chapter I, Subchapter E as follows:

PART 310—[AMENDED]

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 601-606; 18 U.S.C. 1693-1699.

■ 2a. Revise § 310.5(b) to read as follows:

§ 310.5 Payment of postage on violation.

* * * * *

(b) The amount equal to postage will be due and payable not later than 15 days after receipt of formal demand from the Inspection Service or the Chicago Rates and Classification Service Center (RCSC) unless an appeal is taken to the Judicial Officer Department in accordance with rules of procedure set out in part 959 of this chapter.

* * * * *

■ 2b. Revise § 310.6 to read as follows:

§ 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and part 320 of this chapter may be obtained by writing the Senior Counsel, Ethics and Information, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-1127. A numbered series of advisory opinions is available for inspection by the public in the Library of the U.S. Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

PART 320—[AMENDED]

■ 3. The authority citation for part 320 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 601-606; 18 U.S.C. 1693-1699.

■ 4. Amend § 320.3 in the following manner—

■ a. Revise § 320.3(a) to read as set forth below; and

■ b. Amend § 320.3(b) by removing the words “properly identified postal inspector” and adding the words “properly identified representative of the RCSC” in their place.

§ 320.3 Operations under suspension for certain data processing materials.

(a) Carriers intending to establish or alter operations based on the suspension granted pursuant to § 320.2 shall, as a condition to the right to operate under the suspension, notify the National Administrator for the Private Express Statutes, U.S. Postal Service, RCSC, 3900 Gabrielle Lane, Rm. 111, Fox Valley, IL 60597-9599, of their intention to establish such operations not later than the beginning of such operations. Such notification, on a form available from the office of the National Administrator for the Private Express Statutes, shall include information on the identity and authority of the carrier and the scope of its proposed operations.

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Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04-20184 Filed 9-3-04; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV054-081; FRL-7808-7]

Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to partially approve and partially disapprove revisions to the Clark County portion of the Nevada State Implementation Plan. These revisions concern rules adopted by the Clark County Board of County Commissioners for issuing permits for new or modified stationary sources in Clark County to comply with the applicable permitting requirements under parts C and D of title I of the Clean Air Act as amended in 1990. These provisions of the Clean Air Act are designed to prevent significant deterioration in attainment areas and to attain the National Ambient Air Quality Standards in nonattainment areas. EPA is also approving as a revision to the Nevada State Implementation Plan a State regulation prohibiting the construction of certain types of major new or modified power plants that are under exclusive State jurisdiction in the nonattainment areas within Clark County. The intended