

Customs, as soon as possible, to issue regulations permitting U.S. Customs to deny entry to textiles and textile products where the declared manufacturer has been named in a CITA directive as a company found to be illegally transshipping, closed or unable to produce records to verify production. This document amends the Customs Regulations accordingly.

Customs will deny entry to textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), where the factory, producer or manufacturer is named in a Directive issued by CITA to Customs that is published in the **Federal Register**. In these circumstances, additional information will not be accepted or considered by Customs for purposes of determining the admissibility of the textiles or textile products in question.

The Regulatory Flexibility Act, Executive Order 12866 and Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements

In accordance with the provisions of 5 U.S.C. 553(a)(1), prior public notice and comment procedures are inapplicable to this regulation. This regulation is promulgated pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and is thus within the foreign affairs function of the United States. This regulation is necessary in order to prevent circumvention or frustration of bilateral and multilateral agreements to which the United States is a party and to facilitate efficient and equitable administration of the U.S. textile import program as authorized in section 204. The authority to promulgate this regulation was delegated by the President to the Secretary of the Treasury by Executive Order 12475. Since this document is not subject to the requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does the amendment result in a "significant regulatory action" under E.O. 12866.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

Amendment to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *
Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;
* * * * *

2. Section 12.131 is amended by designating the existing text as paragraph (a), and by adding a heading to newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 12.131 Entry of textiles and textile products.

(a) *General.* * * *

(b) *Denial of entry pursuant to directive.* Textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), whether or not the requirements set forth in § 12.130 have been met, will be denied entry where the factory, producer or manufacturer named in the entry documents for such textiles or textile products is named in a directive published in the **Federal Register** by the Committee for the Implementation of Textile Agreements as a company found to be illegally transshipping, closed or unable to produce records to verify production. In these circumstances, no additional information will be accepted or considered by Customs for purposes of determining the admissibility of such textiles or textile products.

Approved: August 20, 1999.

Raymond W. Kelly,
Commissioner of Customs.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
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POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document adopts a proposed rule, which was published in the **Federal Register** on March 6, 1998 (63 FR 11199-11200). It amends the standards for mail matter eligible to be sent at the Nonprofit Standard Mail rates. Specifically, mail matter that

seeks or solicits membership dues payments may contain "promotional" material concerning membership benefits when certain criteria are met. This final rule adopts the proposal as it was published with an explanation below.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Eligibility to mail at Nonprofit Standard Mail rates (referred to below as "nonprofit" rates) is established by statute. These statutes prescribe which organizations may mail at these rates along with the limitations on what may be mailed. As it has noted in numerous rulemakings concerning nonprofit rates (see, for example, 56 FR 46551 (September 13, 1991)), the Postal Service views its role in this area as that of an administrator, rather than that of a policymaker. That is, the Postal Service simply seeks to administer the eligibility provisions on nonprofit mail as set forth by Congress.

On two occasions at the beginning of this decade, Congress enacted limitations on the inclusion of advertising matter at 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 other 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. There are no exceptions listed to the restrictions on advertising for financial instruments; the statute does set forth exceptions to the restrictions on advertising for travel, insurance, and all other products and services. Unfortunately, there is little legislative history concerning these provisions.

The statutes contain two additional exceptions that apply to each of the categories in 39 U.S.C. 3626(j)(1). These exceptions, which are set forth in 39 U.S.C. 3626(j)(2), allow certain acknowledgments of sponsors and references to member benefits to be mailed at the nonprofit rates. The latter exception, which is codified at 39 U.S.C. 3626(j)(2)(B), is the subject of this rulemaking. Again, there is little legislative history concerning these provisions.

The membership benefit exception states that a mailpiece shall not be excluded from being mailed at nonprofit rates solely because that material contains, but is not primarily devoted to, references to and a response card or other instructions for making inquiries about services or benefits available from membership in the authorized organization, if advertising,

promotional, or application materials for such services or benefits are not included. Up to now, the Postal Service has applied this rule in a literal, straightforward manner. That is, nonprofit organizations have been permitted to list a product or service available to members and a response card or instructions for inquiring about the product or service. They have not, however, been permitted to provide additional information concerning the product, such as a description, brand name, price or other terms of purchase that would be promotional in nature. For instance, an organization could state: "An affinity credit card is available to members. For information, please call John Doe at xxx-xxxx," assuming the mailpiece did not consist to a primary degree (i.e., was "not primarily devoted to" under the statute) such product and service references. Contrary to arguments made by mailers, the Postal Service interpretation of the statute was consistent with the statute and created an exception to the blanket preclusion of 3626(j)(1), since the example quoted above would be prohibited by 39 U.S.C. 3626(j)(1)(A) if not for the member benefit exception. However, the Postal Service has not permitted a description of the credit card as "low cost" or as having "no annual fee" or a "five percent interest rate" under the exception since these descriptions would constitute "advertising, promotional, or application materials" prohibited under the statute.

Consideration of the proposed policy was prompted by concerns that the literal reading and Postal Service application of the statute was hindering the efforts of nonprofit organizations to attract and retain members. That is, nonprofit organizations claim that their goal in these mailings is to attract or retain members, rather than to sell benefits, and that the success of these membership efforts hinges on their ability to provide a favorable description of the nonprofit's membership benefits. Although the Postal Service was sympathetic to the concerns raised by some nonprofit organizations, it was mindful, as discussed above, that the accommodation sought appeared to go beyond the literal language of the statute. Moreover, as noted above, there was little legislative history to support the nonprofit organizations' view. Nevertheless, in the belief that the statute was not intended to create an impediment to membership in nonprofit organizations, the Postal Service determined to propose this rule to

alleviate this effect. Accordingly, as discussed in its proposal, 63 FR 11199, the Postal Service proposed to follow the principles utilized in an earlier rule change concerning "back end premiums" by looking at the mailpiece as a single solicitation and considering whether it was primarily intended to attract or retain members or solicit sales of other products and services (citing 62 FR 61014-61015 (November 14, 1997)). This was to be accomplished by objective criteria concerning the relative amount of space devoted in the mailpiece to these purposes.

The application of the new standards is prospective. The former standards were clear, rational, and, as discussed above, consistent with the statute. Therefore, the new standard will not be applied retroactively to any previously assessed revenue deficiencies.

The proposed rule offered standards under which a membership solicitation could be entered at the nonprofit rates, notwithstanding the inclusion of promotional material for products and services. For purposes of this exception, "minor" is defined as less than half. Measurement of contents would be performed in accordance with the same standards for measuring advertising and nonadvertising in a Periodicals publication as described in Domestic Mail Manual (DMM) P200.1.7. Except as allowed below, only the solicitation letter is eligible to contain information about membership benefits under this standard. It does not apply to any brochures, circulars, flyers, or other separate, distinct, or independent documents. Any advertising, promotional, or benefit application materials in these latter documents will cause the entire mailpiece to be ineligible for the nonprofit rates unless other provisions allow it to be entered at those rates. The proposed rule did establish a limited exception for an organization that prepares a standard, preprinted document, consisting of a single sheet, that lists and describes its membership benefits. This document may be enclosed with and considered part of the solicitation letter for purposes of applying the proposed test, provided that the membership letter does not itself list or describe the member benefits. The membership letter may, however, refer the addressee to the separate list of benefits. (For example, the letter may state "For a description of benefits available to members, please see the attached sheet," as long as no promotional material concerning the benefits is included in the letter.)

The Postal Service received a total of 29 comments on the proposed rule. A majority of commenters supported the

rule, but in some cases with reservations that the proposal does not go far enough to allow nonprofit organizations to describe membership benefits in the mails. There were two commenters who expressed disagreement with the proposed rule or any change that would make it easier to describe such benefits.

Evaluation of Comments Received

Written comments were received from 26 organizations and associations representing nonprofit organizations, one individual, and two organizations representing the travel industry. Of primary concern to 23 of the commenters is the Postal Service's proposed limitation of mailpieces eligible to contain descriptive material about membership benefits to mailpieces that are a solicitation for membership, renewal of membership, or requests to become a contributing member. These commenters, many of which operate on a monthly dues cycle, do not communicate with members by solicitation or renewal letter, but by newsletter. This group of commenters wants the proposal to extend to nonprofit organizations the ability to describe with favorable terms membership benefits in newsletters. One individual simply requested a copy of the proposed rule, which has been provided. One commenter believes the proposed rule does not make clear that among membership benefits that may be described under the proposal are credit cards, travel arrangements, and insurance. These services, advertising for which has been restricted since 1991 under 39 U.S.C. 3626(j)(1)(A-C), are subject to restrictions whether they are described in a stand-alone mailpiece or a newsletter. This same commenter also was concerned about the limitations of the proposal to membership solicitations. Two additional commenters expressed concern that the proposed rule would create an overly narrow definition of a membership solicitation or renewal mailpiece. Like the previous commenters, they suggested that the proposal be extended to include all membership mailings, not just membership solicitations or renewals. They also stated that the Postal Service should exclude membership benefits that are substantially related to a nonprofit organization's purposes when determining whether a mailpiece contains a "minor" description of benefits under the rule.

The two commenters representing the travel industry strongly opposed the proposed rule change. These commenters requested that the Postal Service withdraw the proposed

modification to standards on the bases that the proposed rule's literal language contravenes the statute on which it is based; the rule conflicts with federal policy pronouncements on competition between small firms and nonprofit organizations; the rule constitutes a faulty interpretation of the statute; and the rule reflects unsound postal policy.

The Postal Service considered the comments, and has determined to adopt the rule as proposed. The requests to extend the policy beyond membership solicitation letters but to newsletters sent to all members are beyond the scope of the proposal. The standards adopted here were undertaken to ensure that the advertising restrictions did not have a detrimental effect on the ability of nonprofit organizations to attract and retain members. They are intended to apply where the mailpiece is intended only to attract or retain members, rather than to sell the products or services described in them, and the proposal was limited to membership solicitation letters for that reason. Moreover, this decision does not prohibit organizations from mentioning their benefits in member newsletters. Indeed, unless the benefit concerns travel, insurance, or financial instruments (the so-called TIF advertisements), the organization likely is already free to describe them in newsletters under 39 U.S.C. 3626(j)(1)(D)(III) and DMM E670.5.4(d)(2). Further, even if a "TIF" benefit is involved and it is not within the statutory exceptions in 39 U.S.C. 3626(j)(1), the newsletter can, as described above, include an announcement such as: "(Product) is available to members. For further information, contact . . ."

The request that the calculation of the percentage of membership benefits not include "substantially related" advertisements appears to the Postal Service to be inconsistent with the language of the statute. That is, nothing indicates that all relevant references to benefits should not be included in determining whether the mailpiece is "primarily devoted" to member benefit references. If the Postal Service were to adopt this proposal, it would permit, at the nonprofit rate, letters consisting entirely, or nearly entirely, of descriptions of membership benefits. This would seem to be inconsistent with the underlying reason for this policy change (i.e., that the letters are primarily intended to attract or retain members rather than to sell products or services).

The Postal Service agrees that the policy adopted here applies to all member benefits, including travel, insurance, and financial instruments, but does not believe that the proposed

rule is misleading or requires revision concerning this issue.

The Postal Service disagrees with the commenters who oppose the proposal. As discussed above, although the Postal Service does not believe that the proposed policy represents the most literal reading of the underlying statute, it disputes the assertion that it is contrary to the language of the statute or beyond the authority of the Postal Service to adopt. The Postal Service acknowledges the keen financial interest that these commenters have in this policy, and commenters' concern that the use of nonprofit rates will put them or their members at a competitive disadvantage. The Postal Service does not believe that it can establish a special policy for membership benefits concerning travel arrangements; the language of 39 U.S.C. 3626(j)(2)(B) provides no basis for distinguishing travel from other products and services. Nevertheless, the Postal Service believes that the limited scope of the policy change will minimize any adverse effect on for-profit businesses. The rules are intended to help nonprofit organizations attract and maintain members, rather than to compete in the sale of products and services. Thus, mailings should be made to prospective members only and existing members only at the time when renewals are due, rather than to the membership or public at large. Should circumstances require, the Postal Service will consider revisiting this policy.

After full consideration of the comments received and for the reasons discussed above, the Postal Service believes it appropriate to adopt, without revisions, the proposed changes in eligibility requirements.

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. Amend Domestic Mail Manual E670.5.7, by revising b. to read as follows:

Domestic Mail Manual (DMM)

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E Eligibility

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E670 Nonprofit Standard Mail

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5.0 Eligible and Ineligible Matter

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5.7 Other Matter

An authorized nonprofit organization's material is not disqualified from being mailed at the Nonprofit Standard Mail rates solely because that material contains, but is not primarily devoted to:

* * * * *

b. References to and a response card or other instructions for making inquiries about services or benefits available from membership in the authorized organization, if advertising, promotional, or application materials for such services or benefits are not included. For purposes of this section, descriptions of membership benefits available as a part of membership, including the use of adjectives, terms, conditions, and brand names, are permissible when they are a minor part of a solicitation or renewal request for membership payments. For purposes of this provision, "minor" is defined as "less than half." Measurement is made in accordance with P200. The solicitation or renewal request in which, to a minor degree, membership benefits may be promoted is considered to include only a printed letter to prospective members or current members whose membership is about to expire, and not to any separate, distinct, or independent brochure, circular, flyer, or other documents. Such separate documents will be considered advertising if they contain any advertising, promotional, or application materials. Exception: A separate document prepared by the qualifying organization, consisting of one sheet, will be considered to be part of the solicitation letter if it describes the organization's membership benefits and the solicitation letter does not describe the organization's benefits but instead refers the reader to the separate document.

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Stanley F. Mires,

Chief Counsel, Legislative.

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