

Mineral Materials

§ 292.68 Mineral material operations.

Subject to the provisions of part 228, subpart C, and part 293 of this chapter, the authorized officer may approve contracts and permits for the sale or other disposal of mineral materials, including but not limited to, common varieties of gravel, sand, or stone. However, such contracts and permits may be approved only if the material is not within a designated wilderness area and is to be used for the construction and maintenance of roads and other facilities within the SRNRA or the four excluded areas identified by the Act.

Other Provisions

§ 292.69 Concurrent reclamation.

Plans of operations involving locatable minerals, operating plans involving outstanding mineral rights, and contracts or permits for mineral materials should all provide, to the maximum extent practicable, that reclamation proceed concurrently with the mineral operation.

Indemnification

§ 292.70 Indemnification.

The owner and/or operator of mining claims and the owner and/or lessee of outstanding mineral rights are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for the following:

(a) Costs, damages, claims, liabilities, judgments, injury and loss, including those incurred from fire suppression efforts, and environmental response actions and cleanup and abatement costs incurred by the United States and arising from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operation. This includes acts or omissions covered by Federal, State, and local pollution control and environmental statutes and regulations.

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss, damage, or costs, including for fire suppression and environmental response action and cleanup and abatement costs, which result from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operations.

(c) Costs incurred by the United States for any action resulting from noncompliance with an approved plan of operations or activities outside an approved operating plan. Such costs

may include, but need not be limited to, attorneys' fees and expenses.

Dated: September 2, 1997.

Robert Lewis, Jr.,

Acting Associate Chief.

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POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Matter

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the standards for mail matter eligible to be sent at the Nonprofit Standard Mail rates. Specifically, mail matter that seeks or solicits contributions or membership dues payments and offers a premium item such as a tote bag or umbrella will be considered eligible for the Nonprofit Standard Mail rates provided that certain criteria are met. The Postal Service has determined that a revision to the standards in this manner is consistent with the treatment of similar solicitations by other agencies, most notably the Internal Revenue Service and the Federal Trade Commission.

DATES: Comments must be received on or before October 8, 1997.

ADDRESSES: Written comments should be mailed or delivered to Manager, Business Mail Acceptance, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260-6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6801 at the above address.

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

SUPPLEMENTARY INFORMATION: Nonprofit organizations authorized to mail at the Nonprofit Standard Mail rates commonly offer premium items when soliciting contributions or membership in their organizations. These premiums, often referred to as "backend premiums" since they are offered in return for a contribution, donation, or membership dues payment, include such items as tote bags, umbrellas, t-shirts, and coffee mugs.

By statute, material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service, other than separately restricted travel, insurance, and

financial instruments such as credit cards, is ineligible for the nonprofit rates of postage unless certain prescribed exceptions are met. 39 U.S.C. 3626(j)(1)(D). In accordance with its responsibility to administer the statute, the Postal Service promulgated new standards effective October 1, 1995.

Domestic Mail Manual (DMM) E670.5.4d. provides that Nonprofit Standard Mail rates may not be used for the entry of material that advertises a product or service unless 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 the Nonprofit Standard Mail rates. In the implementation of these rules, the Postal Service has concluded that "utilitarian" items such as tote bags, umbrellas, coffee mugs, t-shirts, and similar items are not normally considered substantially related to an organization's qualifying purposes.

Since the adoption of the regulations implementing the statute, the Postal Service has consistently held that backend premiums are to be considered advertising for the product offered as a premium. This policy was discussed in **Federal Register** articles promulgating the new rules. See 60 FR 22270, 22272 (May 5, 1995); 59 FR 23158, 23162 (May 5, 1994). It has also been followed in publications such as USPS Publication 417 (Nonprofit Standard Mail Eligibility) and training in this area. Backend premiums are similar to typical advertisements because they invite a transaction which provides funds to the sender, but are dissimilar from typical advertisements because the value of the premium is usually much less than the required donation or other payment. Although cognizant of the argument that the donor is motivated by eleemosynary purposes, rather than a desire for the article, the transaction can also be viewed as part donation and part sale, which, in the view of the Postal Service, makes the offer an advertisement under the statutory restrictions. This interpretation of the statute is, at least in part, supported by IRS policy, which requires donors declaring charitable deductions to subtract the value of premiums from donations.

Recently, the Postal Service has become aware of new developments which warrant review of the policy concerning backend premiums. Notably, an advisory opinion by the Federal Trade Commission held that telephone fundraising calls in which certain backend premiums are offered are not "telemarketing" because they are not "conducted to induce the purchase of

goods or services." Similarly, the Internal Revenue Service does not deem nonprofit organizations that provide backend premiums to be involved in sales transactions.

The Postal Service believes it is reasonable to provide similar treatment to backend premiums, particularly where the receipt of the premiums does not appear to be the principal motivation of the donors or members. In these instances, the offer of the premiums will not be considered as "advertisements" for postal purposes; thus the announcements are exempt from the substantially related rules affecting advertisements in nonprofit mail. The Postal Service proposes two tests. First, the requested contribution or other payment must be at least five (5) times the total cost of the premiums to exempt the announcements from being considered as advertisements for the premiums. The cost of each premium is its actual cost to the nonprofit organization. Second, the requested contribution or other payment must be at least three (3) times the represented values in the mailpiece, if any, of the premiums. Both tests must be met or the offer will be considered an advertisement. Nonprofit organizations wishing to mail solicitations for contributions which offer a premium may be asked to substantiate the cost to the nonprofit organization for the premium, consistent with their usual obligation to demonstrate eligibility for nonprofit rates.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, 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]

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 E670.5.0, Eligible And Ineligible Matter, by renumbering subsections 5.9 to 5.10, 5.10 to 5.11, 5.11 to 5.12, and 5.12 to 5.13, and adding a new subsection 5.9 to read as follows:

5.0 ELIGIBLE AND INELIGIBLE MATTER

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5.9 Contribution and Membership Premiums

Announcements for premiums received as a result of a contribution or payment of membership dues are not considered advertisements if the requested contribution or membership dues is at least 5 times the cost to the nonprofit organization of the premium item(s) offered and at least 3 times the represented value in the mailpiece, if any, of the premium item(s) offered.

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3. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

R. Andrew German,

Acting Chief Counsel, Legislative.

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–1 and 101–46

RIN 3090–AG50

Replacement of Personal Property Pursuant to the Exchange/Sale Authority

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations issued by GSA for replacement of personal property pursuant to the exchange/sale authority. The exchange/sale authority permits executive agencies when acquiring replacement personal property, to exchange or sell similar items and apply the exchange allowance or proceeds of sale in whole or in part payment for the replacement property acquired. Changes have been made to incorporate plain English principles, streamline the narrative, define key terms, update organizational references, delete outdated regulatory references, delegate authority to executive agencies to approve deviations under certain conditions, and reduce restrictions and limitations on use of the authority.

DATES: Comments must be received on or before October 8, 1997.

ADDRESSES: Written comments should be sent to the Personal Property Management Policy Division (MTP), Office of Governmentwide Policy, General Services Administration, 1800 F St., NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT:

Martha Caswell, Director, Personal Property Management Policy Division (202–501–3828).

SUPPLEMENTARY INFORMATION:

A. The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for public comment. Therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 501 *et seq.* This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a "plain English" style.

What is the "plain English" style of regulation writing?

The "plain English" style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

How does the plain English style of regulation writing affect employees?

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

List of Subjects in 41 CFR Parts 101–1 and 101–46:

Exchange/sale of government property, government property management.

Therefore, it is proposed that 41 CFR Ch. 101 be amended set forth below:

PART 101–1—INTRODUCTION

1. The authority citation for 41 CFR parts 101–1 and 101–46 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Section 101–1.110(a) is revised to read as follows: