publication are mailable at the special bulk third-class rates regardless of whether their sale or provision is substantially related to the purposes of the qualified organization. (This proposed rule change does not affect the prohibition on mailing advertisements for affinity, credit, debit, or charge cards; insurance policies; and travel arrangements.) Also, the cost of a lowcost item has been adjusted for cost of living. Editorial changes, including the consolidation of provisions and deletion of unnecessary or redundant provisions, have been proposed in several sections for the purpose of clarity. These editorial changes are not intended to make substantive changes from the rules adopted on May 5, 1994.

As a reminder, mailers should remain aware that the restrictions in proposed DMM E370.5.4(d) do not apply unless the material to be mailed "advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of" a product or service. Other material is not prohibited under this restriction. This includes certain acknowledgments and "permissible references" described in current DMM E370.5.6 (which would be renumbered as DMM E370.5.7 under this proposal). 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; a new definition of public service announcements has recently been adopted by the Postal Service in the Federal Register (59 FR 10021) on February 23, 1995. The determination whether other material may come within the restrictions in 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 other item subject to section DMM E370.5.4(d). The Postal Service understands that sweepstakes announcements generally involve such arrangements. Where an individual is only eligible for a prize or premium if a purchase is made, the matter would generally be considered under the provisions of DMM E370.5.4(d).

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]

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.
- 3. In the Domestic Mail Manual, section E370 is amended by adding 5.4(d), 5.6, 5.8, and 5.10. The proposed text is as follows:

# E-Eligibility

E370 Special (Nonprofit) Bulk Rates

5.0 Eligible and Ineligible Matter

## 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

### [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 qualified 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 qualified 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