special bulk third-class rates and what they may mail at those rates are established by statute. Although these laws set forth restrictions against the entry of advertisements at the special rates, they also provide exceptions to the restrictions. The Postal Service is not permitted to change provisions of the statutes by rulemaking as urged by the comment. The same comment also asked that the rules be revised to limit advertisements mailed at the special bulk third-class rates to those advertisements that are substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates, which it describes as the "current rule." In fact, this provision was part of the final rule published on May 4, 1994, to implement the 1993 amendments. As described above, this provision was subsequently indefinitely delayed, but it is adopted as part of this final rule. The comment essentially requested the Postal Service to ignore the additional exception created in the 1994 amendments. This would be beyond the authority of the Postal Service for reasons explained above. The same comment also argued that the proposed rule creates an overly broad definition of periodical publication in DMM E370.5.8; the comment would limit the new exception to "legitimate nonprofit publications" and change proposed DMM E370.5.8d to require the publication to contain at least 75% nonadvertising matter. The exception in the 1994 amendments is not limited to 'periodicals"; it refers to material meeting the content requirement for periodical publications. Moreover, the proposed 75% threshold is inconsistent with existing content requirements.

In addition to the changes to the proposed rule described above, the following additional minor changes have been made in the final rule. The phrase "qualified organization," which describes organizations authorized to mail at the special bulk third-class rates, has been changed to "an authorized organization" in DMM 5.6c and 5.6d. DMM 5.6b(3) has been revised to clarify that the exception in the 1994 amendment applies to material that meets the content requirements for periodicals rather than solely to 'publications.'' Finally, the requirement for inclusion of a USPS number in DMM 5.8c(6) has been eliminated since such a number would ordinarily appear only in matter entered as second-class mail.

### 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. 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; add new E370.5.4(d), 5.6, 5.8, and 5.10 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 of:

#### [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

[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 authorized 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 authorized 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