

is to promulgate rules implementing Public Laws 103-123 and 103-329.

A final rule was published in the **Federal Register** (59 FR 23158-23164) on May 5, 1994, to implement provisions of Public Law 103-123, with an effective date of September 4, 1994. That final rule was subsequently indefinitely delayed by notice in the **Federal Register** (59 FR 39967) on August 5, 1994. This final rule adopted in this notice carries forth most of the same rules that were to have been effective September 4, 1994, while implementing the new exception for advertisements provided by Public Law 103-329. The exception specifies that advertisements in material that meets the content requirements for a periodical publication, as specified by the Postal Service, need not be substantially related to the purpose(s) of the authorized organization to qualify for mailing at the special bulk third-class rates.

As explained below, the new rules deny the use of special bulk third-class rates for mailpieces that do not meet the content requirements for a periodical publication as prescribed by the Postal Service and contain one or more advertisements for products or services that are not "substantially related" to a purpose on which the organization's authorization to mail at the special bulk third-class rates is based. This prohibition applies regardless of the inclusion of other advertisements that do qualify for mailing at those rates. Products and services advertised in mailpieces that meet the content requirements for a periodical publication need not be substantially related to a purpose of the authorized organization to be mailable at the special bulk third-class rates. These new rules are in addition to, and are designed to be compatible with, existing prohibitions on the use of special bulk third-class rates for improper cooperative mailings and for certain advertising of financial instruments, insurance policies, and travel arrangements. Restrictions on advertisements for the last three types of products or services are not subject to the exceptions adopted in this rulemaking.

Material that is not considered to be advertising is not prohibited under these restrictions. This material includes certain acknowledgments and "permissible references" described in current DMM E370.5.6 (which will be renumbered as DMM E370.5.7). 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. The

determination of whether other material comes within the restrictions in new 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 otherwise subject to DMM E370.5.4(d). The Postal Service understands that sweepstakes announcements usually include such arrangements. When an individual is eligible for a prize or premium only if a purchase is made, the matter would generally be considered under the provisions of DMM E370.5.4(d).

#### Evaluation of Comments Received

Written comments were received from six associations and organizations. One favorable comment recommended adoption of the proposed rule in its entirety. Three other comments generally favored adoption of the proposed rules, with specific objections to only one subsection. Two comments expressed broader concerns with the proposal. After considering all six comments, the Postal Service has determined to adopt the rule as proposed except for minor changes described below.

Although two comments did not object to the four general content requirements for a periodical publication in proposed DMM E370.5.8 (i.e., title, printed sheets, identification statement, and nonadvertising content) or to the remainder of the proposed rules, they opposed the requirement for a frequency statement in the identification statement. The comments stated that this additional rule creates a frequency requirement whereas the restrictions adopted by Congress call for eligibility to be based on the content requirements for periodical publications, not periodicity or other requirements. The comments pointed out that it is important to recognize the financial and staffing resource constraints under which many nonprofit organizations operate. They stated that it is not uncommon for an organization's mailing to be prepared, printed, and presented to the Postal Service for delivery after a volunteer has found the time to write the material, or after the next grant or donation has been received to fund its production, or both. As an alternative to eliminating the requirement for a frequency statement in the third-class publication's identification statement, one of the comments suggested that mailers be

allowed to state the frequency as "irregular."

The Postal Service agrees with the statements of these two comments that the exception created in the 1994 legislation does not establish a frequency requirement for matter meeting the content requirements for a periodical publication. The Postal Service proposal is based on the need to implement a statute that requires a listing of the content requirements for periodicals. Identification statements are required to be printed in second-class periodicals, and frequency statements are in the identification statements. However, unlike second-class publications, publications eligible for mailing at the special bulk third-class rates are not required to be issued according to a regular frequency or to have a minimum number of issues produced each year. The rule simply requires mailers to provide a description of the publication frequency in the identification statement. If the term "irregular," or a similar term, best describes the intended frequency, then that description satisfies DMM E370.5.8. As a further note, if the frequency changes, the new frequency should be included in the identification statement when the publication is again published; no separate notice need be provided to the Postal Service. Further, the Postal Service will not monitor the publication to ensure that the stated frequency is met and will not impose sanctions if it is not followed, as might occur if a frequency requirement were imposed. Accordingly, in view of the comments received, the Postal Service has added "irregularly" as an example of a statement of frequency in DMM 5.8c(3). It has also changed the requirement in that subsection from "Statement of frequency showing how many issues are to be published each year and at what regular intervals (daily; weekly; monthly except June; four times a year in June, August, September, and December; annually; etc.)" to "Statement of frequency showing when issues are to be published (daily; weekly; monthly; monthly except June; four times a year in June, August, September, and December; annually; irregularly, etc.)" to eliminate confusion as to what constitutes an acceptable statement of frequency.

Two comments reminded the Postal Service of its commitment to publish and distribute a detailed handbook to be made available to interested mailers, and these comments asked that this handbook include explanations concerning specific types of mailings, particularly if such explanations could not be added directly to the DMM. As