

POSTAL SERVICE

39 CFR Part 111

Advertisements for Animals and Sharp Instruments for Use in Animal Fighting Ventures are Nonmailable

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 601.9.3.1, 601.11.20, and 601.12.5.7, to align our standards with section 26 of the Animal Welfare Act as amended by the Food, Conservation, and Energy Act of 2008.

EFFECTIVE DATE: February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Collins at 202-268-5440.

SUPPLEMENTARY INFORMATION:

On June 18, 2008, Congress enacted the Food, Conservation, and Energy Act of 2008 (the 2008 Act) which amended certain provisions of the Animal Welfare Act pertaining to animal fighting ventures. The 2008 Act's amendments added prohibitions on using the mail service of the United States (1) to advertise an animal for use in an animal fighting venture, or (2) to advertise a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture. The 2008 Act also revised the definition of the term "animal fighting venture" to refer to "any event, in or affecting interstate or foreign commerce" involving a fight "conducted or to be conducted" between at least two animals. To implement the 2008 Act's amendments and to ensure that our standards comport with the current language in section 26 (7 U.S.C. 2156) of the Animal Welfare Act (AWA), we are implementing the new standards.

Although we are 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 invited public comments on the following proposed revision of the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR part 111.

COMMENTS RECEIVED:

The Postal Service received comments from six parties. Three commenters supported the rule as proposed by the Postal Service without modification. Other comments were submitted as follows:

One commenter suggested for the US Postal Service to decline adopting the Humane Society's proposed change to section 601.12.5.7 of the DMM. We noted that the suggested change to proposed section 601.12.5.7 is not explicitly supported by the text of subsections 2156(c) and (d) in 7 U.S.C. 2156 (the AWA). In the absence of further guidance from the text of the statute, we decline to adopt the suggested change.

One commenter urged the Postal Service not to adopt the proposed rule on the grounds that the proposed rule violates the First Amendment of the U.S. Constitution. The proposed rule only implements the statutory language set forth in 7 U.S.C. 2156, therefore we find that the comment is beyond the scope of this rulemaking.

Finally, another commenter appears to object to the exception in proposed section 601.12.5.7 for fighting ventures involving live birds if such fight is permitted under the laws of the state in which the fight is to take place. The commenter suggests that no states permit animal fighting. We note that paragraph 2156(g)(3) in Title 7, U.S. Code, provides that the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. We understand that at least one of these jurisdictions continues to permit fights involving live birds. Therefore, we decline to modify the exception to proposed section 601.12.5.7 of the DMM for fighting ventures involving live birds that are permitted under the laws of the state in which the fight is to take place. The other issues raised by the commenter are beyond the scope of this rulemaking.

The Postal Service hereby adopts the following changes to the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.
Accordingly, 39 CFR Part 111 is amended as follows:

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, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

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600 Basic Standards for All Mailing Services

601 Mailability

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9.0 Perishable

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9.3 Live Animals

[Revise the heading and text of 9.3.1, as follows:]

9.3.1 Prohibition on Animals Intended for Use in an Animal Fighting Venture

An animal is nonmailable if such animal is being mailed for the purpose of having it participate in an animal fighting venture (7 U.S.C. 2156). This standard applies regardless of whether such venture is permitted under the laws of the state in which it is conducted. Violators can be subject to the criminal penalties in 18 U.S.C. 49. See 601.11.20 for the prohibition on mailing sharp instruments intended for use in an animal fighting venture and 601.12.5.7 for restrictions on mailing written, printed, or graphic matter related to animal fighting ventures.

For this standard:

- a. the term *animal* means any live bird, or any live mammal (e.g., dog), except human;
- b. the term *animal fighting venture* means any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment (excluding any activity whose primary purpose involves using one or more animals in hunting other animals); and
- c. the term *state* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any U.S. territory or possession.

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11.0 Other Restricted and Nonmailable Matter

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[Revise the heading and text of 11.20, as follows:]

11.20 Prohibition on Sharp Instruments Intended for Use in an Animal Fighting Venture

The interstate or international mailing of a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture (as defined in section 601.9.3.1b) is prohibited (7 U.S.C. 2156). Violators can be subject to the criminal penalties in 18 U.S.C. 49. See 601.9.3.1 for the prohibition on mailing animals intended for use in an animal fighting venture and 601.12.5.7 for the restrictions on mailing written, printed, or graphic matter related to animal fighting ventures.

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12.0 Written, Printed, and Graphic Matter Generally

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12.5 Other Nonmailable Matter

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[Revise the heading and text of 12.5.7, as follows:]

12.5.7 Restriction on Matter Related to Animal Fighting Ventures

This standard does not pertain to written, printed, or graphic matter related to fighting ventures involving live birds if such fight is permitted under the laws of the state in which the fight is to take place (7 U.S.C. 2156). The terms *animal*, *animal fighting venture*, and *state* are defined in 601.9.3.1. Written, printed, or graphic matter is nonmailable if it:

- a. advertises an animal for use in an animal fighting venture;
- b. advertises a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture; or
- c. promotes or in any other manner furthers an animal fighting venture.

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We will publish an appropriate amendment to 39 CFR 111 to reflect these changes.

Stanley F. Mires,
Chief Counsel, Legislative.
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