

Postal Service
"Restrictions on Private Carriage of Letters"
39 FR 3968 (Jan. 31, 1974)
(revised notice of proposed rulemaking)

Federal Register, vol. 39, no. 22 – Thursday, January 31, 1974

[39 FR 3968b]

POSTAL SERVICE

[39 CFR Parts 152, 310, 320]

RESTRICTIONS ON PRIVATE CARRIAGE
OF LETTERS

Comprehensive Standards for Permissible Private Carriage

Introduction. On July 2, 1973 the Postal Service published in the Federal [39 FR 3968c] Register 38 FR 17512-16. a notice of proposed rulemaking on this subject. A number of comments were received in response to this publication. The Postal Service has revised its proposed regulations to reflect many points raised in the comments and is publishing this second proposal for further public comment.

HIGHLIGHTS OF THE REVISED PROPOSED REGULATIONS

(a) *Definition of letter.* The first proposal contained "a broad, and we hope readily understandable, definition of 'letter' that continues the basic coverage of the Statutes as to messages transmitted in corporeal form." A number of comments contained objections that our definition of "letter" was overly broad. In the main, these comments were critical of the theoretical breadth of the definition rather than of its practical consequences. Thus, many of the comments evinced concern that items which would be excluded from the proscriptions of the Statutes by affirmative suspensions (e.g. checks, magazines, and certain data processing materials) rather than by administrative interpretations (as they sometimes have been in the past) might one day be proscribed by virtue of some future repeal of the suspensions. The premise for this concern seems to be the exclusion based on administrative interpretation is more secure than exclusion by affirmative suspension. But the premise might prove flimsy. Interpretations are subject to revision and reversal— particularly where they are not firmly anchored to judicial case law. They represent especially weak reeds to lean on where they are little more than ipse dixit utterances that find scanty support in either the text or the legislative history of the Statutes being interpreted. In our view forthright suspensions provide firmer ground on which to rest the exclusions.

The revised proposal does, however, contain certain modifications in the proposed definition of "letter". These modifications include supporting definitions for the words "message" and "specific

address and other additional language intended to clarify the meaning of the word "letter".

(b) *Suspensions for checks, newspapers, and periodicals.* A number of comments indicated that checks, newspapers, and periodicals should be excepted from the definition of the word "letter". Yet checks are messages in writing, intended for particular persons or concerns; they convey live, current information between sender and addressee upon which the sender expects or intends the addressee to act, rely, or refrain from acting. As such, checks clearly meet the tests that have been used in the past to determine whether particular matter constitutes letters. "Restrictions on Transportation of Letters", POD Publication 111, section 3 (July 1967), contained in Committee Print No. 93-5, June 29, 1973, House Committee on Post Office and Civil Service (report of the Board of Governors under section 7 of [39 FR 3969a] the Postal Reorganization Act and accompanying materials), at 33. Similarly, though to a lesser extent, newspapers and periodicals also meet the tests in past guidelines for determining what are letters. Moreover, from the point of view of the language, purposes, and legislative history of the Private Express Statutes, an exclusion—by administrative definition—of checks from the definition of "letters" seems unjustified and an exclusion of newspapers and periodicals seems of doubtful validity. Definitional exclusion would not, moreover, guarantee that a redefinition to eliminate the exclusion might not be attempted at a later time.

A number of comments showed concern that the Postal Service might revoke the suspensions for checks, newspapers, and periodicals at some future time. To allay this concern, the subsection on revocation (§ 320.2(b)) has been revised to state that it is not expected that these suspensions will be revoked. Section 320.3(b) has also been amended to require that any revocation of the suspensions for intra-company and data processing materials or other changes affecting the suspensions would have to take place in accordance with the rulemaking provisions of the Administrative Procedure Act. The language that would prevent a revocation so as to curtail then-existing levels of operations under the suspensions is retained. The provisions restricting revocation of the suspensions would not apply to revocations as to particular carriers. A new provision governing such revocations for carriage in violation of the regulations is included, 320.3(f).

The suspension proposed for checks and other financial instruments has been revised to cover all such instruments moving to and from financial institutions. The suspension has also been amended to include certain matter intrinsically related to the movement of checks within the banking system and to define the term "financial institutions". The suspension would not, however, include matter, such as bank statements, accompanying the movement of checks between banks and depositors. In this latter area, existing limitations would be retained.

(c) *Suspensions for additional material.* Several comments indicated that certain carriers had long operated under authority granted by state and federal regulatory agencies to carry materials that could no longer be carried privately, without the payment of postage, under the first proposed regulations. In response, the following points are offered:

First, no regulatory agency has been authorized to grant authority to carry letters in violation of the Private Express Statutes;

Second, authorization by regulatory agencies to carry certain materials does not restrict the authority of the Postal Service to make reasonable changes in its administration of the Private Express Statutes, nor would the exercise of such authority by the Postal Service result in an alternation or revocation of outstanding [39 FR 3969b]ing licenses granted by regulatory agencies. On the contrary, the operations of all carriers—regulated or unregulated—are, in our view, subject to the Private Express Statutes and the valid administrative practices of the Postal Service under such Statutes, neither of which can be limited by outside administrative authority.

Third, outstanding licenses must be read in light of the Private Express Statutes and administrative practices thereunder. It would be unreasonable to read a certificate of operating rights or the like as though it were intended to authorize exemptions from the proscriptions of the Statutes where the issuing agency has no authority to grant such exemptions.

In light of other comments, however, the revised proposal contains four additional suspensions that would broaden the categories of material that may be carried privately and clarify the intended scope of the first proposal, although none of these suspensions is intended to broaden the application of the Private Express Statutes beyond that reflected in POD Publication 111, *supra*. The additional suspensions cover the following four categories of material: certain legal documents; catalogs and telephone directories, identical letters sent by a printer or other supplier of letters for third persons in bulk to a single address; files sent for storage or destruction or moved as part of a household or business relocation.

(d) *Suspensions for data processing and intra-company materials.* A number of comments called for changes in the terms of the proposed suspensions for data processing and intra-company materials. In response to several of these comments, we have revised certain conditions of these suspensions, as follows:

(i) *Time limits for completed delivery.* The revision substitutes noon of the addressee's next business day or 12 hours, whichever is longer, for the 12 hours or the beginning of the addressee's next business day as the test for completed delivery under these suspensions. (This means, for example that material sent at 11 p.m. sender's local time on January 15 must be delivered by 12 noon, receiver's local time on January 16, if the receiver conducts business on January 16, unless the elapsed time during this period is less than 12 hours, in which event a full 12 hours is allowed, material sent at 1 a.m. on January 16 would have until noon January 17 to be delivered, under similar conditions and assumptions.) The proposal does not reflect acceptance of the still larger time limits proposed in some of the comments. since the suspensions were intended only for clearly urgent matter that the Postal Service might not be expected to deliver approximately within time limits imposed by senders and recipients.

(ii) *Time limits for completion of data processing work.* The revised proposal eliminates the requirement that the data processing center complete its work on material sent to it for processing under [39 FR 3969c] the suspension within 36 hours. On the other hand, since the suspensions are intended only for urgent material. it seems reasonable to require that data processing work on

materials sent to a processing center under the suspensions commence reasonably promptly. Accordingly, the revised proposal would require that such work commence within 36 hours of receipt of the material at the processing center.

(iii) *Reporting procedures.* These suspensions reflect a voluntary relaxation by the Postal Service of an economic right conferred upon it by Congress for the public purpose of financing comprehensive nationwide postal services for all members of the public, without regard to the economic attractiveness of each particular route or area. In view of the fact that Congress has seen fit to confer this right—a monopoly over the delivery of most letters—on the Postal Service for that public purpose and has conditioned the suspension of this right on a finding that the public interest supports the action, it would not seem to be responsible to exercise the suspension authority without requiring reporting on activity under the suspensions adequate to demonstrate their practical effects. Moreover, the Postal Rate Commission commented that such reports should, in its opinion, be obtained.

Some comments asserted that it would be nearly impossible for carriers to report on volume and revenue carried under the suspensions. Yet most business under the suspension for intra-company communications will probably be new business, since ordinary intra-company mail cannot be carried without payment of postage at this time. ("The same rules apply to determine whether matters sent between the various branches of a concern are 'letters' as apply in other cases." POD Publication 111, *supra*, section 6.) All business under the suspension for data processing materials except that meeting the existing rigid tests for auditing materials (see POD Publication 111, *supra*, section 8)--will also be new. It should not be impracticably difficult for carriers to identify this new business, together with whatever old business is now being done under the present narrow "exception" for auditing materials, for reporting purposes.

If some of the comments we have received should be taken to mean that these materials are already being carried by private means without the payment of postage, then it would appear that the private carriers are not doing what they should do to inform their customers of the limitations in the Private Express Statutes so as to assure that they comply with the law. We have no doubt that simple and understandable procedures can be worked out to inform users of private carriage of what they can send privately and how it should be designated so that an accurate accounting of material carried under these suspensions can be kept. Moreover, while we wish to require no complicated accounting system for the private carriers, we believe [39 FR 3970a] it not unreasonable to require that reasonably accurate records be maintained as to volume and gross under these suspensions, with appropriate simplifications for comparatively small operations. We are not proposing the details of these operating or record procedures because we would hope to be able to leave it up to carriers to develop their own procedures, suited to their particular needs. The procedures should, however, be briefly described in the annual reports furnished to the Postal Service on operations under these suspensions.

We have eliminated many of the details of the first proposed annual report form, and made reporting less detailed for carriers having smaller operations under these suspensions. We have not,

however, accepted the proposal that we accept reports filed with regulatory agencies in lieu of reports tailored to the suspensions involved here. These other reports would contain much unnecessary and irrelevant information and might not contain the basic volume and revenue information required to assess the practical effects of the suspensions.

(iv) We have eliminated the requirement that the annual report data be supported by an accountant's certificate. We agreed with the comments that stated or implied that this was not the kind of material to which accountants normally certify. In its place, we propose that a responsible officer of the carrier sign the report, in notarized form, acknowledging the applicability of 18 U.S.C. 1001.

(v) The revised proposal states that the Postal Service will not publicly release the information in the notifications and annual reports but that the information may be summarized and released in summary form. This change is in response to several comments that expressed concern about the confidentiality of information reported to the Postal Service.

(vi) To lend assurance that the proposed suspensions of the Statutes will not be abused, annual reports would have to be accompanied by a certificate from each substantial customer of the carrier who takes advantage of the intra-company and data processing suspensions. A "substantial customer" would be anyone who makes use of a carrier to carry intra-company or data processing materials more than 25 times a year or who pays the carrier more than \$250 in one year for the carriage of such materials. The certificate would attest to the fact that no materials were sent in violation of the limits to the suspensions. The underlying thought is that a carrier's customers will generally have a better idea of the nature of the material being sent than will the carrier. A form certificate is proposed for this purpose.

Several comments urged that the suspension for intra-company mail should extend to affiliated companies. Such an extension would expand the limits of the suspension beyond the limits of the "current business of the carrier" exception as outlined in POD Publication 111, supra, [39 FR 3970b] section 16 ("* * * the ownership of one carrier by another does not entitle either to carry letters not sent by or addressed to it outside the mails for the other without the payment of postage"). In an age of corporate conglomerations and the like, such an extension would unduly erode the basic protection of mail revenues which the Statutes are intended to provide. The revision also proposes continuation of the rule that mail sent under the suspensions must be sent between offices of the same company. Thus the suspension does not cover mail sent by an employee or agent of the company not sent from a company office.

OTHER MATTERS RAISED IN THE COMMENTS

(a) *"Employees" for purposes of the letters of the carrier exception.* Several comments raised objections to the first proposal on the grounds that a new criterion for determining whether an individual carrying a letter is an employee within the purposes of the letters of the carrier except—that of full-time employment had been included in the proposed language describing the exception, in

addition to the criteria carried forward from POD Publication 111, *supra*, section 16.

While we are aware of no past administrative or judicial determination that full-time employment is necessary for an individual to qualify under this exception, the amount of time worked does seem a relevant factor in determining whether an individual is an employee for purposes of this privilege, just as is whether the employee is a regular salaried employee who enjoys the normal benefits of employment with the company for which he is working. Accordingly, the revised proposal retains the full-time employment guideline. It should be emphasized, however, that the language in question is stated in terms of factors that bear on qualifications for the privilege. A part-time employee would not necessarily fail to qualify if the other incidents of his employment indicate that he is an employee, not an independent contractor.

(b) *Payment of postage on violation.* Several comments suggested that the provision of the first proposal establishing an administrative mechanism for the assessment of postage due on matter carried in violation of the Private Express Statutes should be amended either to limit the amount that might be assessed, to establish a willfulness test as a precondition to the assessment of postage due, or to require specific prior notice before postage could be assessed. The language of the revised proposal, however, retains the substance of the language as contained in the first proposal.

Imposing the limitations which had been suggested could make the process of collecting postage due for violations of the Statutes complicated and uncertain. Moreover adoption of the notice suggestion would give even willful violators an opportunity to commit violations until specifically notified. We would [39 FR 3970c] stress, moreover, that the provision under which the Postal Service may take steps leading to the collection of postage due for violations of the Statutes is not mandatory. Offending carriers will be permitted to make their arguments in mitigation of claims for postage due during the process of the assessment of the amount due. However, the Private Express Statutes are important revenue laws and the burden is clearly upon the carriers to assure that the material they are carrying is being carried consistently with the law.

(c) *Correspondence accompanying cargo.* It was suggested that the proposed regulations should permit the enclosure with cargo of unrelated correspondence such as advertising matter, intended for the recipient of the cargo. Adoption of this suggestion as an interpretative regulation is precluded by the language of 18 U.S.C. 1694, requiring that excepted letters "relate to some part of the cargo". Moreover, neither past practice nor present need would seem to justify a suspension of the Statutes to cover this material. The revision, therefore, retains the law on this matter as it has been administered in the past. See POD Publication 111, *supra*, section 17.

(d) *Live, current information test.* Certain of the comments argued in favor of the validity of the live, current information test reflected in prior administrative practices under the Private Express Statutes. See POD Publication 111 *supra*, section 3. The test is not based upon any statutory provision or judicial precedent. Moreover, the test never purported to define what constitutes a "letter" but was intended merely to demonstrate what the term "letter" might include in addition to personal correspondence. *Ibid.*

In our experience, fortified by the comments we received, the live, current information test has not served well either to inform the public of the meaning of the Private Express Statutes or to reflect the intended scope of the Statutes as enacted. Rather, some members of the public have concluded that all messages not containing "live, current information" are not letters, a proposition that is not legally justified. Certain published "interpretations," of the Statutes, moreover, also seem to be without substantial legal support. We are aware of no reason why, for example, an original letter sent to a particular addressee should fall under the prohibitions of the Private Express Statutes but a carbon copy of the same letter sent subsequently to the same addressee should not fall under the prohibitions of the Statutes. Similarly, we have found no satisfactory basis for the past determination that materials sent to an auditing office maintaining no records based on the information sent to it and taking no other action than mere auditing action do not constitute letters whereas like materials sent to a typical central billing office would be letters. See POD Publication 111, supra, sections 8 and 9. In our view, all material of this kind constitutes letters, whether or not [39 FR 3971a] a particular analysis might yield the result that live, current information was being conveyed between sender and recipients. The suspension proposed for data processing materials, moreover, while involving a time limit for completed delivery should result in substantially preserving the limited right of private carriage for auditing materials as it existed in the past.

STATUS OF PROPOSED REGULATIONS

The regulations proposed on July 2 1973, were proposals only; they have not been implemented, in whole or in part, by the Postal Service, and the Private Express Statutes continue to be administered under practices antedating the July 2, 1973, notice of proposed rulemaking. Similarly, the revised proposal published now is only a proposal; it has not been implemented, in whole or in part by the Postal Service, and previous administrative practices continue in effect. We point these things out in an effort to erase any erroneous impression that may exist that the proposed regulations have already been implemented, in whole or in part.

We would caution against the assumption that eventually the proposed regulations will be finally adopted, substantially in the form in which they have been proposed. With the exception of the suspensions for intra-company and data processing materials, it seems likely that regulations will be adopted generally along the lines we have proposed. The two suspensions for new material, however, present far more difficult issues and we cannot predict the outcome of this rulemaking with respect to them. They may be adopted as proposed, they may be liberalized; they may be narrowed; or they may not be adopted at all.

The following are the principal factors that are likely to bear on the decision whether, and in what form, to adopt these two suspensions:

1. The alleged need to liberalize the suspensions in order to cause them to be workable. This is a two-edged sword, since it encourages a liberalization while it discourages any sort of suspension, in view of the additional revenue impact upon the Postal Service of expanded suspensions.

2. The alleged unworkability of reporting requirements. This factor also is a two-edged sword. While it points, on the one hand, to a weakening or elimination of reporting requirements, it also raises on the other hand, significant questions as to whether the limitation contained in the suspensions can adequately be enforced.

3. The comments of many customers that they look first to the Postal Service to supply their needs and that they would prefer to use the Postal Service rather than private carriage.

4. Developments in the Postal Service's Express Mail service, a service already meeting a substantial public need for expedited transportation of letters.

COMMENTS

The revised proposed regulations have been, prepared following careful consid-**[39 FR 3971b]** eration of the comments submitted to the Postal Service in response to its first set of proposed regulations, 38 FR 17512-16, July 2, 1973. The revised proposal should be read carefully against the background provided by the previous proposal, its preamble, the compendium of administrative and judicial rulings in POD Publication 111, supra, entitled "Restrictions on Transportation of Letters", and other materials published in Committee Print No. 93-5, June 29, 1973, of the House Committee on Post Office and Civil Service, supra.

We have attempted in the revised proposal and in its preamble to respond fully to the comments we received. We hope that a close review of the revised proposal, its preamble and the other available background information will resolve the outstanding questions in this area. We invite, however, any further comments which the public might have on the proposed regulations now that they have been revised, including any matters raised in comments following the first proposal that are believed to remain unresolved by the revised proposal. Accordingly, interested parties wishing to do so should submit data, views, or arguments concerning the proposed regulations in writing to the General Counsel United States Postal Service, Washington, D.C. 20260, at any time on or before March 18, 1974.

Louis A. Cox,
General Counsel.

JANUARY 29, 1974.

PART 152—WHO MAY CARRY LETTERS

I. The regulations previously codified in the 1970 revision of 39 CFR as Part 152, retained in effect by 35 FR 19399 (1970), are rescinded and Part 152 is reserved.

II. The note following Part 958 in the table of contents for 39 CFR Ch. I in the volume revised as of Aug. 1, 1973, is deleted.

III. *New Subchapter E.* Title 39 Code of Federal Regulations, is amended by the addition of the following subchapter E:

SUBCHAPTER E--RESTRICTIONS ON PRIVATE CARRIAGE OF LETTERS

PART 310--ENFORCEMENT OF THE PRIVATE EXPRESS STATUTES

Sec.

- 310.1 Definitions.
- 310.2 Unlawful carriage of letters.
- 310.3 Cargo exception.
- 310.4 Letters of the carrier exception.
- 310.5 Private hands without compensation exception.
- 310.6 Special messenger exception.
- 310.7 Carriage prior or subsequent to mailing exception.
- 310.8 Payment of postage on violation.
- 310.9 Advisory opinions.

AUTHORITY: 39 U.S.C. 401, 404, 601-606, 18 U.S.C. 1693-1699, 1724.

§ 310.1 Definitions.

(a) "Letter" is a message directed to a specific person or address and recorded in or on a tangible object, subject to the following:

(1) Tangible objects used for letters include, but are not limited to, paper [**39 FR 3971c**] (including paper in sheet or card form), recording discs, and magnetic tapes.

(2) "Message" means any information or intelligence that can be recorded as described in paragraph (a) (4) of this section.

(3) A message is directed to a "specific person or address" when, for example, it is directed to a named or identifiable individual, organization, or official, or when it is directed to a specific place.

(4) Methods by which messages are recorded on tangible objects include, but are not limited to, the use of written or printed characters, drawing, holes, or orientations of magnetic particles in a manner having a predetermined significance.

(5) Whether a tangible object bears a message is to be determined on an objective basis without regard to the intended or actual use made of the object sent.

(6) Identical messages directed to more than one specific person or address or separately directed to the same person or address constitute separate letters.

(7) The specific form of letter known as a telegram is implicitly exempted from the restrictions of the Private Express Statutes by Congress.

(b) "Packet" means two or more letters, under one cover or otherwise bound together. As used in these regulations, unless the context otherwise requires, "letter" or "letters" includes "packet" or "packets".

(c) "Person,, means an individual corporation, association, partnership. governmental agency, or other legal entity.

(d) "Post routes" are routes on which mail is carried by the Postal Service, and include post roads as defined in 39 U.S.C. 5003, as follows:

- (1) The waters of the United States, during the time the mail is carried thereon;
- (2) Railroads or parts of rat/roads and air routes in operation
- (3) Canals, during the time the mail is carried thereon;
- (4) Public roads, highways, and toll roads during the time the mail is carried thereon; and
- (5) Letter-carrier routes established for the collection and delivery of mail.

(e) The "Private Express Statutes" are set forth in 18 U.S.C. 1693-1699 and 1724 and 39 U.S.C. 601-606 (1970).

§ 310.2 Unlawful carriage of letters.

(a) It is generally unlawful under the Private Express Statutes for any person other than the Postal Service in any manner to send or carry a letter on a post route or in any manner to cause or assist such activity. Violation may result in injunction, fine or imprisonment or both, and payment of postage lost as a result of the illegal activity (see § 310.8).

(b) Activity described in § 310.2(a) is lawful with respect to a letter if—

- (1) It is enclosed in an envelope or other suitable cover;
- (2) The amount of postage which would have been charged on the letter if it had been sent through the Postal Service is paid by stamps, or postage [39 FR 3972a] meter stamps, on the cover or by other methods approved by the Postal Service;

(3) The name and address of the person for whom the letter is intended appears on the cover;

(4) The cover is so sealed that the letter cannot be taken from it without defacing the cover;

(5) Any stamps on the cover are cancelled in ink by the sender, and

(6) The date of the letter, or of its transmission or receipt by the carrier, is endorsed on the cover in ink by the sender or carrier, as appropriate.

(c) The Postal Service may suspend the operation of any part of paragraph (b) of this section where the public interest requires the suspension.

(d) Activity described in paragraph (a) of this section is permitted with respect to letters which—

(1) Relate to some part of the cargo of, or to some article carried at the same time by, the conveyance carrying it (see § 310.3);

(2) Are sent by or addressed to the carrier (see § 310.4);

(3) Are conveyed or transmitted by private hands without compensation (see § 310.5);

(4) Are conveyed or transmitted by special messenger employed for the particular occasion only, provided that not more than twenty-five such letters are conveyed or transmitted by such special messenger (see § 310.6); or

(5) Are privately carried prior or subsequent to mailing (see § 310.7).

§ 310.3 Cargo exception.

The sending or carrying of letters is permissible if the accompany shipments and if the letters relate exclusively to the shipment process or to the goods shipped.

§ 310.4 Letters of the carrier exception.

(a) The sending or carrying of letters is permissible if they are sent by or addressed to the individual carrying them or if they are sent-by or addressed to an officer or employee of a carrier on the current business of the carrier (i.e., in his capacity as an officer or employee) .

(b) The fact that the individual performing the carriage may be an officer or employee of the carrier for certain purposes does not necessarily mean that he is an officer or employee for purposes of this exception. The following factors bear on qualification for the exception: the carrying employee is employed full time; the carrying employee is a regular salaried employee and shares in all privileges

enjoyed by other regular employees (including employees not engaged primarily in the letter-carrying function), including but not limited to salary, annual vacation time, absence allowed for illness, health benefits, workmen's compensation insurance, and retirement benefits.

(c) Separately incorporated carriers are separate entities for purposes of this exception, regardless of any subsidiary, ownership, or leasing arrangement. When, however, two concerns jointly operate an enterprise with joint employees and share directly in its revenues and [39 FR 3972b] expenses either of the concerns may carry the letters of the joint enterprise.

§ 310.5 Private hands without compensation exception.

The sending or carrying of letters is permissible if no charge for carriage is made by the carrier. However, a person engaged in transportation of goods or persons for hire does not fall within the exception merely by carrying letters free of charge for customers whom he does charge for the carriage of goods or persons.

§ 320.6 Special messenger exception.

(a) The use of a special messenger employed for the particular occasion only is permissible to transmit letters if not more than twenty-five letters are involved. The permission granted under this exception is restricted to use of messenger service on an infrequent, irregular basis by the sender or addressee of the message.

(b) A special messenger is a person who, at the request of either the sender or the addressee, picks up a letter from the sender's home or place of business and carries it to the addressee's home or place of business, but a messenger or carrier operating regularly between fixed points is not a special messenger.

§ 310.7 Carriage prior or subsequent to mailing exception.

(a) The private sending or carrying of unopened letters which enter the mail stream at some point between their origin and destination is permissible. The origin of a letter is the residence or place of business of the sender, the destination of a letter is the residence or place of business of the addressee.

(b) Examples of permitted activity are the pickup of letters which are delivered to post offices for mailing; the pickup of letters at post offices for delivery to addressees; and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.

§ 310.8 Payment of postage on violation.

(a) Upon discovery of activity made unlawful by the Private Express Statutes, the Postal Service may require any person or persons who engage in, cause or assist such activity to pay an

amount or amounts not exceeding the total postage to which it would have been entitled had it carried the letter between its origin and destination.

(b) Such payment of postage will be due and payable not later than 15 days after receipt of formal demand from the Inspection Service unless an appeal is taken to the Judicial Officer Department in accordance with rules of procedure set out in Part 959 of this chapter.

(c) Refusal to pay an unappealed demand or a demand that becomes final after appeal will subject the violator to civil suit by the Postal Service to collect postage.

(d) This provision for the payment of postage on violation shall in no way limit other actions to enforce the Private Express Statutes by civil or criminal proceedings. [39 FR 3972c]

§ 310.9 Advisory opinions.

An advisory opinion on any question arising under this part and Part 320 of this chapter may be obtained by writing the Assistant General Counsel, Opinions Division, United States Postal Service, Washington, D.C. 20260. Final opinions will be available for inspection by the public in the Library of the United States Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

PART 320--SUSPENSIONS OF THE PRIVATE EXPRESS STATUTES

320.1 Definitions.

320.2 Suspensions.

320.3 Operations under suspensions.

Authority: 39 U.S.C. 401, 404, 601.

§ 320.1 Definitions.

The definitions in § 310.1 apply to this Part 320 as well.

§ 320.2 Suspensions

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes for the types of matter, and on such terms, as are detailed in paragraph (c) of this section. The effect of these suspensions is to allow any person to send or carry letters covered by the suspensions between places served by the Postal Service without paying postage or meeting any other conditions of 39 U.S.C. 601(a) and § 310.2(b) of this chapter.

(b) The suspensions reflected in § 320.2(c) (3)-(8) are generally intended to confirm long-standing practice and it is not expected that they will be revoked administratively in the future. The suspensions reflected in § 320.2(c) (1) and (2) may be administratively revoked, but only in

accordance with the rulemaking provisions of the Administrative Procedure Act. No administrative revocation will curtail then-existing operations under such suspensions to a level of operations lower than that antedating the revocation in a particular market served prior to the revocation. Reasonable regulatory changes in conditions affecting the suspensions may be implemented at any time as to all carriers operating under the suspensions, but only in accordance with the rulemaking provisions of the Administrative Procedure Act. Nothing in this paragraph applies to administrative revocation of suspensions as to particular carriers under § 320.3 (f).

(c) The following types of matter, if carried under the indicated conditions, are not subject to penalty pursuant to the Private Express Statutes or the regulations issued thereunder.

(1) Interoffice communications between offices and branches of an entity entitled to carry such communications under § 310.4, if transmission is completed within 12 hours or by noon of the addressee's next business day. The addressee's next business day shall be the first calendar day, stated in his local [39 FR 3973a] time, on which he conducts business, following the calendar day of dispatch, stated in the sender's local time.

(2) Data processing materials conveyed to or from a data processing center, if transmission is completed within 12 hours or by noon of the addressee's next business day, and if data processing work is commenced on any such materials sent to a data processing center within 36 hours of their receipt at the center. The addressee's next business day shall be the first calendar day, stated in his local [39 FR 3973a] time, on which he conducts business, following the calendar day of dispatch, stated in the sender's local time. For purposes of this suspension, "data processing" means electro-mechanical or electronic processing and "data processing materials" include materials of all types that are ready for immediate data processing or for automatic conversion into a form ready for immediate data processing and the direct output of data processing, but only if they are produced on a regular periodic basis.

(3) Checks, drafts, stock certificates, promissory notes, bonds, other securities, insurance policies, and title policies when shipped to, from, or between financial institutions.

(i) As used above, "checks" include documents intrinsically related to and regularly accompanying the movement of checks within the banking system, return items (whether or not bearing notations) and instruments that call for the crediting or debiting of accounts maintained at financial institutions that must be acted upon promptly by reason of the rules under which the financial institutions operate or the nature of the transaction. "Checks" do not include materials accompanying the movement of checks to or from financial institutions, except such material as would qualify under § 310.3 if "checks" were treated as cargo. Specifically, for example, "checks" do not include bank statements sent to depositors showing deposits, debits, and account balances.

(ii) As used above, "financial institutions" include

(A) as to checks: banks, their offices, affiliates, and facilities, savings banks, savings and loan

institutions, and credit unions; and

(B) as to other financial instruments: institutions performing functions involving the bulk generation, clearance, and transfer of such instruments.

(4) Abstracts of title, mortgages deeds, leases, articles of incorporation papers filed in lawsuits or formal quasi-judicial proceedings, and orders of court.

(5) Newspapers and periodicals.

(6) Catalogs eligible for a catalog publication rate under the mail schedule in effect at the time of their shipment, and telephone directories.

(7) Identical letters sent by a printer or other supplier of letters for third persons in bulk to a single address.

(8) Letters sent in bulk for storage or destruction or as part of a household or business relocation.**[39 FR 3973b]**

§ 320.3 Operations under suspensions.

(a) Persons intending to establish or alter operations based on suspensions granted pursuant to § 320.2(c) (1) and (2) shall, as a condition to the right to operate under the suspensions, notify the Private Express Liaison Officer, Customer Services Department, United States Postal Service, Washington, D.C. 20260, of their intention to establish such operations not later than the beginning of such operations. Such notification, on a form available from the Private Express Liaison Office, shall include information on the identity and authority of the carrier and the scope of its proposed operations.

(b) As a further condition to the right to operate under these suspensions, persons filing notification under § 320.3(a) shall file, on forms available from the Private Express Liaison Office, annual reports containing information on volume, revenue, and such other matters as may be required by the Postal Service on services performed under the suspensions granted pursuant to § 320.2 (c) (1) and (2). The annual reports must be accompanied by certificates, in a form prescribed by the Postal Service, from each customer who makes use of a carrier to carry intra-company or data processing materials more than 25 times a year or who pays the carrier more than a total of \$250 in one year for the carriage of such materials as to the nature of materials sent. The reports are to be filed within sixty days of the end of each twelve-month period, commencing with the beginning of the carriers operations under the suspensions identified in § 320.2(c) (1) and (2). No carrier shall continue, after its annual report is filed, to serve any customer required to sign a certificate under this subsection whose certificate is not attached to the annual report, except that service may be resumed after a late certificate is filed with the Private Express Liaison Officer. This prohibition shall not limit other administrative or judicial actions to enforce the Private Express Statutes or the regulations in

this Part 320 or Part 310 hereof. A blank certificate, with explanatory material attached thereto, should be furnished to an customers prior to beginning service for them under the suspensions granted pursuant to § 320.2 (c) (1) and (2) .

(c) Persons operating under the suspensions granted pursuant to § 320.2(c) (1) and (2) are responsible for making sure that the carriage of matter under these suspensions meets all conditions contained in § 320.2(c) (1) and (2). The containers or covers of any matter carried under such suspensions must be made available for examination upon request by a properly identified postal inspector. They must contain information, including place, date and time dispatched and received, from which compliance with the conditions contained in § 320.2(c) (1) and (2) may be determined. The provisions of this paragraph shall not restrict the Postal Service in [39 FR 3973c] the exercise of search powers conferred upon it by law.

(d) The Postal Service will not publicly release the information in the notifications and annual reports and attachments thereto filed under this section, but the information submitted by groups of carriers may be summarized and released in summary form.

(e) The filing of notifications or reports under this section does not relieve the operator of responsibility for assuring that its operations conform to applicable statutes and regulations.

(f) Failure to comply with the reporting requirements of this section and carriage of material or other action in violation of other provisions of this Part and of Part 310 are grounds for administrative revocation of the suspensions as to a particular carrier, following a hearing by the Judicial Officer Department in accordance with the rules of procedure set out in Part 959 of this chapter.

NOTE: The forms referred to in § 320.3 are reproduced below.

Notice of Intent to Establish Operations under Suspensions of The Private Express Statutes²

(See 39 CFR Part 320, Suspensions of the Private Express Statutes)

PRIVATE CARRIAGE OF LETTERS

Name of carrier _____
 Address _____
 State of Incorporation _____
 Geographical Area to be Served _____

² This form should be used for an initial notice of operations and for any amendments to the Initial or subsequent notices. Information relates exclusively to operations under the suspensions for Intra-company and data processing materials.

1. State whether notice is for operations under 39 CFR § 320.2(c) (l) or § 320.2(c)(a), or both.

2. Designate the specific markets or areas in which operations will be conducted.

3. Describe specifically any authorizations issued by local, state, or federal regulatory agencies under which operations will be conducted.

(Signature of Officer)

(Name and Title)

Subscribed and sworn to before me this ____ day of _____ 197_ .

(Notary Public)

SEAL

Note: False statements contained herein are punishable by law, 18 USC 1001.

ANNUAL REPORT

Operations Under Suspensions of the Private Express Statutes¹

(See 89 CFR Part 320, Suspension of the Private Express Statutes)

PRIVATE CARRIAGE OF LETTERS

Twelve Month Period Ending _____

Name of Carrier _____

Address _____

State of Incorporation _____

I. Short form report -- revenue less than \$10,000.

¹ Information relates exclusively to operations under the suspensions for intra-company communications and data processing materials.

1. Certify that gross revenue from operations under 39 CFR § 320.2(c) (1) and (2) during the period covered was less than \$10,000. State the estimated amount of such revenue.

2 Briefly describe the basis on which figure for gross revenue was computed.

3. Listed below are the names and business addresses of each sender of materials under 39 CFR 320.2(c) (1) and (2) during the period covered by this report that sent more than 25 shipments during the period or paid more than a total of \$250 during the period for the carriage of such materials.

[List]

32.

Attached to this report are customer certificates of the customers listed above as required by 39 CFR 320.2(b).

(Signature of Officer)

(Name and Title)

Subscribed and sworn to before me this ____ day of _____ 197__.²

(Notary Public)

SEAL

Note: False statements contained herein are punishable by law, 18 USC 1001.

II. Regular form report--revenue more than \$10,000.

1. State the number of shipments and gross revenue from operations under 39 CFR 320.2(c)(1) and (2), separately, during the period covered.

2. If gross revenue from such operations during such period was in excess Or \$10,000 within any single city, town, or other local jurisdiction or between any pair of cities, towns, or local

² Report to be signed and submitted to the Private Express Liaison Officer, 39 CFR 320.3 (b), not later than 30 days after the close of the period covered by the report. [39 FR 3974b]

jurisdictions, provide information covering operations in each such market in accordance with section 1 above.

3. Briefly describe the basis on which all figures contained in this report on number of shipments and gross revenue were computed.

4. Listed below are the names and business addresses of each sender of materials under 39 CFR 320.2(c) (1) and (2) during the period covered by this report that sent more than 25 shipments during the period or paid more than a total of \$250 during the period for the carriage of such materials.

[List]

Attached to this report are customer certificates of the customers listed above as required by 39 CFR 3203(b).

(Signature of Officer)

(Name and Title)

Subscribed and sworn to before me this _____ day of _____, 197__.²

Notary Public

SEAL

NOTE: False statements contained herein are punishable by law, 18 USC 1001.

**CUSTOMER'S CERTIFICATE--TO ACCOMPANY
CARRIER'S ANNUAL REPORT**

(See 39 CFR Part 320. Suspensions of the Private Express Statutes)

Year Ending _____
(to be completed by carrier)

² Report to be signed and submitted to the Private Express Liaison Officer. 39 CFR 320.3 (b), not later than 60 days after the close of the period covered by the report.

Name of Customer _____

Address _____

During the period covered by this certificate _____ has used the
(name of customer)

services of _____ to carry letters as defined in 39 CFR S 310.1(a). This
(name of carrier)

is to certify that all letters so defined that _____ has sent via
(name of customer)

_____ have consisted of intra company communications or data processing
(name of carrier)

materials as defined in 39 CFR § 320.2(c) (1) and (2), letters meeting the definitions and conditions of those exceptions from the restrictions on the private carriage of letters found in 39 CFR §§ 310.3-310.7 or carried under other suspensions of the Private Express Statutes set forth in 39 CFR § 320.2(c) (3) -(8), or letters on which postage was prepaid and which meet the other conditions of 39 CFR § 310.2(b). (The provisions of 39 CFR mentioned above are printed in the explanatory material attached to this certificate.)

(Signature of Officer)

(Name and Title)

Subscribed and sworn to before me this _____ day of _____, 197__.

SEAL

Note: False statements contained herein are punishable by law, 18 USC 1001.

USE OF PRIVATE CARRIERS FOR THE TRANSPORTATION OF LETTERS--
EXPLANATORY MATERIAL

The use of private for-hire carriers to transport letters is restricted by the Private Express Statutes, 18 U.S.C. 1693-1699 and 1724 and 39 U.S.C. 601-606 (1970), and regulations of the Postal Service, excerpts from the latter of which are set out below. The definition of the word "letter" for purposes of these restrictions is set forth in section 310.1 (a), below. (A complete copy of these regulations may be obtained by writing the Assist- [39 FR 3974c] ant General Counsel, Opinions Division, United States Postal Service, Washington, D.C. 20260.)

The Postal Service has suspended the restrictions of the Private Express Statutes so as to permit intra-company communications and data processing materials to be carried privately under certain conditions, Once each year customers that use the service of private carriers under these two suspensions more than 25 times during the year or pay more than a total of \$250 during the year for the carriage of such materials must complete the attached certificate showing that all material sent via the private carrier was intra-company or data processing material as defined in the regulations or met other tests under the regulations for letters that can be carried privately.

Accordingly, if your use of private carriage for these materials exceeds the amounts stated above, this form should be completed for the year ending on (to be completed by carrier) and sent to (name and address of carrier) by not later than (to be completed by carrier).

[Text of 39 CFR 310.1-310.7; 3202 (a), (c)]
[FR Doc. 74--2641 Filed 1-30-74;8:45 am]