

Postal Service  
"Restrictions on Private Carriage of Letters"  
39 FR 33209 (September 16, 1974)  
(adoption of final rule)

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**[39 FR 33209b]**

Title 39 – Postal Service

Chapter I – U.S. Postal Service

Subchapter E- RESTRICTIONS ON PRIVATE CARRIAGE

OF LETTERS

COMPREHENSIVE STANDARDS FOR PERMISSIBLE PRIVATE CARRIAGE

Carriage of Letters and Enforcement and Suspension of the Private Express Statutes

*Introduction.* On July 2, 1973, the Postal Service published in the Federal Register, 38 FR 17512-16, a notice of proposed rulemaking on this subject, setting forth proposed regulations and inviting written views and arguments from interested persons. Following review of the numerous comments that were submitted in response to this first proposal, the Postal Service revised its proposed regulations to reflect many points raised in the comments and, on January 31, 1974, published a second proposal for further public comment, 39 FR 3968-74. The Postal Service has further revised its proposed regulations to reflect many points raised in the comments in response to the second proposal and is now publishing final regulations, which will become effective on October 20, 1974.

The basis and purpose of these regulations have been described in the two publications of proposed regulations and will not—generally speaking [sic]—be restted [sic] below. Nor will the reasons for accepting or rejecting comments be restated insofar as they have been previously set forth. The following discussion is intended principally to cover new material raised in the comments on the second proposal and suggested by changes embodied in the final regulations.

HIGHLIGHTS OF THE FINAL REGULATIONS

(a) *Suspensions for newspapers and periodicals.* A number of the comments reflected continuing objections to the proposed suspension of the statutory restrictions so as to provide for the private carriage of newspapers and periodicals. Similar comments raised the same point in respect to certain other mailable matter—principally checks. Although, as previously explained, the proposed

suspensions may provide the firmest possible support for the conclusion that the matter in question (newspapers, periodicals checks, certain legal papers, etc.) should be permitted carriage outside of the mails, we have largely met the point of these objections (i.e., that suspensions might be revoked in the future) by relocating the provisions permitting carriage of the matter in question, placing them in the definitional section of the regulations, § 310.1. However, our suspension authority in 39 U.S.C. § 601(b) has been relied upon to the extent it is required as a predicate for establishing these exceptions to the prohibitions on the private carriage of letters.

(b) *Suspension for intra-company materials.* The final regulations omit this suspension. In first proposing this suspension [39 FR 33209c] a year ago, we were concerned with the magnitude of the possible loss of revenue to the Postal Service and with problems of enforcing the limitations that had been written into the proposed suspension. Accordingly, we proposed a reporting system intended to reflect the amount of business being done and to facilitate enforcement of the limitations. Many of the comments received stressed that the reporting system would be unworkable. Since we recognize some merit in these comments, we have had to consider whether to go forward with the suspension without an adequate system of reporting or whether to drop the suspension.

Our decision to choose the latter alternative springs partly from two developments within the postal system since the suspension was first proposed. First, the Postal Service's Express Mail program—providing long-distance courier-speed delivery of letters in many markets—has developed to the point that more of the public need for rapid service can now be met by the Postal Service than was true in the past. Second, financial conditions in the Postal Service today require that the most careful consideration be given to any proposal that might curtail postal revenues, particularly if the curtailment could be large and its control difficult. For these principal reasons, we have concluded that the Postal Service should not exercise its discretion to suspend the Private Express Statutes as to intra-company letters.

(c) *Suspension for data processing materials.* A number of comments suggested changes in the suspension for data processing materials. Several suggested providing more time for the completion of allowable private transmission when distances are greater. Since the suspension is intended to cover the transmission of materials that are so urgently needed that transmission through the mails is clearly too slow to be acceptable, the transmission times provided seem reasonable on shipments between domestic points and further liberalization for such shipments does not seem warranted. On international shipments, however, the final rules provide that the delivery period will be deemed to begin or end when the shipment enters or leaves the international gateway city.

Certain comments urged the deletion of the requirement that data processing materials qualifying for the suspension be produced on a regular periodic basis. The need for a suspension has not been demonstrated for irregular and special shipments, however, and the definition has not been loosened in the final rules.

Various comments asked that the requirement that data processing work commence within 36 hours of receipt of the materials at the processing center be eliminated. Since the suspension is

intended only to cover cases of real need for rapid transmission, a time limit on the commencement of processing work [39 FR 33210a] seems appropriate. Thirty-six hours seems ample time to begin critical data processing work.

We changed the wording of the suspension slightly to make it clear that materials conveyed from a processing center can move under the suspension only if they are returning to the office originating the data processing materials. Materials sent elsewhere are not covered by the suspension.

(d) *Application of APA procedures to changes in regulations.* Some comments stated that the second proposed regulations were unclear as to the Postal Service's commitment to follow the Administrative Procedure Act (APA) in making changes in the regulations. The final regulations respond to these comments through a blanket provision (§ 310.7) that all changes in the regulations will be made only consistently with the APA's rulemaking provisions. Certain comments urged that we commit ourselves now to hold a hearing before making any future changes in the regulations. We believe that such a commitment—which goes beyond the normal obligations of agencies subject to the APA—would unnecessarily encumber the process of changing the regulations.

(e) *Full-time employment criterion.* Certain comments continued to take exception to our including full-time employment as a factor to be considered in determining whether particular carriage qualifies under the "letters of the carrier" exception. To clarify our intent, the final regulations adopt a test of substantiality of time employed, if the employee is not employed full-time. The final regulations also add an additional factor for consideration—the fact that the carrier carries no letters for others. As is clear from the text of the regulation, the items listed are factors for consideration in making a determination as to whether the "letters of the carrier" exception applies. The absence of one or more of the factors does not necessarily mean that the exception is not available.

(f) *Meaning of "private carriage".* A few comments urged that we make clear that terms such as "private carriage" and "private carrier" used in the Private Express context have a different meaning from similar terms used in the context of the practices of the Interstate Commerce Commission, where private carriage refers to carriage by a company itself, rather than carriage by a third-party carrier, such as a common carrier, which is not "private carriage". A new provision, § 310.1(e), was added in response to these suggestions.

(g) *Exception for catalogs.* In response to one comment, the exception for catalogs was modified so that it would apply to catalogs if the classification of matter under which they are mailed were changed, for example, to refer to "bound printed matter" rather than specifically to "catalogs".

(h) *Letters retrieved from storage.* One comment urged that the exception for letters sent to storage be broadened to include letters sent from storage, since [39 FR 33210b] occasionally files are returned from records centers. This suggestion has been incorporated in the final regulations. We did not, however, accept suggestions that the "shipment in bulk" requirement be eliminated, since there appear to be no compelling reasons why the mails cannot be used, or postage paid, on smaller shipments.

(i) *Other financial instruments.* We were urged to broaden the exception for financial instruments to include general language covering "other negotiable and non-negotiable" instruments. This suggestion was accepted, on the basis that the financial instruments covered would include only instruments similar in purpose and effect to those specifically listed, such as certificates of deposit.

(j) *Documents accompanying checks and drafts.* The language including certain documents regularly accompanying the movement of checks within the banking system within the definition of "checks" was expanded to include documents related to and accompanying drafts as well as checks. This general language clearly covers "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"; accordingly the specific quoted language has been omitted from the definition (§ 310.1(a) (7) (ii) (A) ) as being superfluous.

#### OTHER MATTERS RAISED IN THE COMMENTS

(a) *"Grandfather rights".* We were urged to rewrite the "grandfather clause" (§ 320.2(d) ) which would preserve operating rights in the event the suspension for data processing materials is revoked, so as to permit unlimited expansion of the operations of carriers doing business under the suspension when it is revoked. In our view, such a limitless permit could well lead to an excessive erosion of the basic protections of the Statutes. We have retained the proposed formulation permitting continuation of documented levels of operations, stated either in dollar or volume terms. Within these limitations, there would be no restrictions on the "grandfather" substituting new customers for old.

(b) *Relationship to classification.* One comment asserted that the regulations under the Private Express Statutes are part of mail classification and fall within the jurisdiction of the Postal Rate Commission. While it may occasionally be convenient to establish a relationship between mail classification and the restrictions on the private carriage of letters (see §310.1(a)(7)(v)), we find no basis in the law for concluding that the classification of matter for mail rate purposes has any necessary bearing on whether matter may lawfully be carried privately. This position is completely consistent with past administration of the Private Express Statutes as reflected in Restrictions on Transportation of Letters, POD [39 FR 33210c] Publication 111 (1967), p. 24. ("The determination of whether a particular type of matter is a 'letter' for purposes of the Private Express Statutes has no bearing on the determination of whether the same matter is first-, second-, third-, or fourth(parcel post) class matter when it is carried by the postal service.") Nor is there, in our view, any basis in the law for concluding that the Postal Rate Commission has jurisdiction to promulgate regulations under, or otherwise to administer, the Private Express Statutes, a function the former Post Office Department exercised throughout the history of the Statutes prior to enactment of the Postal Reorganization Act.

(c) *Electronic message transmission.* The comments reflected some continuing misunderstanding over whether the Private Express Statutes reach the transmission of messages

through the air, by wire, or by other means not involving the carriage of tangible objects. In our view, they do not. However, the carriage of a tangible object used as the basis of an intangible transmission or produced thereby—such as a written copy of a message sent by wire between two places—would be subject to the Statutes. Also, tangible objects such as disks or tapes on which impulses have been recorded which require electrical equipment to reproduce the recorded messages are "letters" under the definition in § 310.1(a) (1).

(d) *Exception for tax returns.* We were urged by computerized tax services to provide a special exception for tax returns. We believe, however, that the data processing materials suspension and the expanding Express Mail program of the Postal Service ought to provide substantial and sufficient additional opportunities to this industry to obtain rapid delivery service for tax returns they prepare and that a special exception for this industry is not required.

#### CONCLUSION

We believe that the final regulations adopted hereby will accomplish the central purposes of clarifying the administration of the Private Express Statutes and permitting the private carriage of materials to the extent that it is feasible to do so without jeopardizing the financial base of the Postal Service. We will continue to entertain comments at any time from the public as to how these regulations may be improved.

LOUIS A. COX,  
*General Counsel.*

#### PART 152—WHO MAY CARRY LETTERS

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

II. *New Subchapter E.* Effective October 20, 1974, title 39, Code of Federal [39 FR 33211a] Regulations, is amended by the addition of the following subchapter E:

#### PART 310—ENFORCEMENT OF THE PRIVATE EXPRESS STATUTES

Sec.

- 310.1 Definitions.
- 310.2 Unlawful carriage of letters.
- 310.3 Exceptions.
- 310.4 Responsibility of carriers.
- 310.5 Payment of postage on violation.
- 310.6 Advisory opinions
- 310.7 Amendment of regulations.

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 (including paper in sheet or card form), recording disks, 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 following are not letters within the meaning of these regulations:<sup>1</sup>

(i) Telegrams.

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

(A) As used above, "checks" and "drafts" include documents intrinsically related to and regularly accompanying the movement of checks or drafts within banking system. "Checks" do not include materials accompanying the movement of checks to financial institutions **[39 FR 33211b]** from persons who are not financial institutions, or vice versa, except such materials as would qualify under § 310.3 (a) if "checks" were treated as cargo. Specifically, for example, "checks" do not include

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<sup>1</sup> Several of the items enumerated in this paragraph (a) (7) do not self-evidently lie outside of the definition of "letter". To the meet, however that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions or the Private Express Statutes are suspended pursuant to 39 U.S.C. 601 (b).

bank statements sent to depositors showing deposits, debits, and account balances.

(B) As used above, "financial institutions" means:

(1) As to checks and drafts: banks, savings banks, savings and loan institutions, credit unions, and their offices, affiliates, and facilities.

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

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

(iv) Newspapers and periodicals.

(v) Catalogs eligible for a catalog, bound printed matter, or corresponding publication rate under the mail classification schedule in effect at the time of their shipment, and telephone directories.

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

(vii) Letters sent in bulk to or from storage or to destruction as part of a household or business relocation.

(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 includes 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 railroads 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) "Private carriage", "private carrier", and terms of similar import used in connection with the Private Express Statutes or these regulations mean carriage by anyone other than the Postal Service, regardless of any meaning ascribed to similar terms under other bodies of law or regulation.

(f) 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 [39 FR 33211c] 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 § 310.5).

(b) Activity described in paragraph (a) of this section 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 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 appear 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 canceled 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 (a) );

(2) Are sent by or addressed to the carrier (see § 310.3(b) );

(3) Are conveyed or transmitted without compensation (see § 310.3(c) );

(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 § 310.3(d)); or

(5) Are carried prior or subsequent to mailing (see § 310.3(e) ) .

### § 310.3 Exceptions.

(a) *Cargo*. The sending or carrying of letters is permissible if they accompany and relate exclusively to some part of the cargo.

(b) *Letters of the carrier*. 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).

(2) 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 for a substantial time, If not full-time (letters must not be privately carried by casual [**39 FR 33212a**] employees); the carrying employee carries no matter for other senders; 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.

(3) 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 expenses, either of the concerns may carry the letters of the joint enterprise.

(c) *Private hands without compensation*. The sending or carrying of letters is permissible if no charge for carriage is made by the carrier. However, a person engaged in the 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.

(d) *Special messenger*. (1) The use of a special messenger employed for the particular occasion only is permissible to transmit letters if not more than twentyfive 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.

(2) 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.

(e) *Carriage prior or subsequent to mailing.* (1) 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.

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

#### § 310.4 Responsibility of carriers.

Private carriers are cautioned to make sure that their carriage of matter is lawful within the definition, exceptions, suspension, and conditions contained in this part and in Part 320. They should take reasonable measures to inform their customers of the contents of these regulations so that only proper matter is tendered to them for carriage. Carriers should desist from carrying any matter when the form of shipment, identity of [39 FR 33212b] sender or recipient, or any other information reasonably accessible to them indicates that matter tendered to them for carriage is not proper under these regulations.

#### § 310.5 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 letters between their origin and destination.

(b) The amount equal to 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 the amount equal to postage.

(d) The payment of amounts equal to postage on violation shall in no way limit other actions to enforce the Private Express Statutes by civil or criminal proceedings.

#### § 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and Part 320 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.

§ 310.7 Amendment of regulations.

Amendments of these regulations shall be made only in accordance with the rulemaking provisions of the Administrative Procedure Act.

PART 320-SUSPENSION OF THE PRIVATE EXPRESS STATUTES

Sec.

320.1 Definitions

320.2 Suspension.

320.3 Operations under suspension.

Authority: 89 U.S.C. 401, 404, 601.

§ 320.1 Definitions

The definitions in § 310.1 apply to Part 320 as well.<sup>1</sup>

§ 320.2 Suspension.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2 (b) (1) [**39 FR 33212c**] through (6) of this chapter is suspended on all post routes for data processing materials as defined in paragraph (b) on the terms detailed in that paragraph. The effect of this suspension is to allow any person to send or carry processing materials as so defined 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 suspension referred to in paragraph (a) of this section is for data processing materials conveyed to a data processing center, or back from the data processing center to the address of the office originating the data processing materials, if transmission is completed within 12 hours or by noon addressee's next business day, and if processing work is commenced on such material sent to a data processing center within 36 hours of receipt at the center. The "addressee's next business day" means the first calendar day in his local time, on which he conducts business, following the calendar 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" includes materials of all

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<sup>1</sup> Several of the items enumerated in § 310.1 (a) (7) do not self-evidently lie outside of the definition of "letter". To the extent, however, that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions of the Private Express Statutes are suspended pursuant to 39 U.S.C. 601(b).

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.

(c) For purposes of the time limitations for completion of delivery referred to in paragraph (b) of this section, delivery of shipments between a domestic point and a foreign point shall be deemed to begin at the time materials of foreign origin are received at the international gateway city or end at the time materials of domestic origin leave the international gateway city.

(d) The suspension referred to in paragraphs (a) and (b) of this section may be revoked. No revocation will curtail operations of particular carriers at the time of the revocations level of operations (in dollar or volume terms, whichever is larger) lower than that antedating the revocation in a particular market served prior to the revocation. Should the suspension be revoked, carriers, as a condition to continuing operations under this subsection, will be required to provide reasonable complete and accurate data to support estimates of past operating levels in particular markets.

### § 320.3 Operations under suspension.

(a) Persons intending to establish or alter operations based on the suspension granted pursuant to § 320.2 shall, as a condition to the right to operate the suspension, 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 **[39 FR 33213a]** 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) Persons operating under the suspension granted pursuant to § 320.2 are responsible for making sure that their carriage of matter under the suspension meets all conditions contained in § 320.2. (See § 310.4.) The containers or covers or covers of any matter contained under the suspension must be made available for examination upon request by a properly identified postal inspector. Carrier records— either in the form of notations or the containers or covers of any matter carried under the suspension granted pursuant to § 320.2 or in the form of records kept by employees of the actual times they make delivery or pickup stops —must be sufficient to show that the delivery of such matter was completed within the applicable time limitation prepared in § 320.2. The provisions of this paragraph shall not restrict the Postal Service in the exercise of search powers conferred upon it by law.

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

(d) Failure to comply with the notified 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 suspension as to a particular carrier for a period of not less than one

year, in a proceeding instituted by the General Counsel, 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 form referred to in § 320.3 is reproduced below.)

NOTICE OF INTENT TO ESTABLISH OPERATIONS UNDER SUSPENSION OF THE PRIVATE EXPRESS STATUTES<sup>1</sup>

(SEE 39 CFR PART 320, SUSPENSION OF THE PRIVATE EXPRESS STATUTES)  
Private Carriage of Letters

Name of Carrier \_\_\_\_\_  
Address \_\_\_\_\_  
State of Incorporation \_\_\_\_\_  
Geographical Area to Be Served \_\_\_\_\_

1. Designate the specific markets or areas which operations will be conducted.
2. Describe specifically any authorizations issued by local, state, or federal regulatory agencies under which operations will be conducted.

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Name and Title) [39 FR 33213b]

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

\_\_\_\_\_  
Notary Public

Seal  
My commission expires \_\_\_\_\_

(Note: False statements contained herein are punishable by law, 18 U.S.C. 1001.)

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<sup>1</sup> Information relates exclusively to operators the suspension for data processing materials. This form should be used for an initial notice of operations and for any amendments to the. initial or subsequent notices.

PART 958--RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO RENT OR RENEW POST OFFICE BOXES AND THE CLOSING OF POST OFFICE BOXES

III. The note following Part 958 in the table of contents for 39 CFR Ch I in the volume revised as of August 1, 1974, is deleted.

[FR Doc. 74--21301 Filed 9-13-74;8:45 am]

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PART 959--RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

Authority for Rules

Pursuant to 39 CFR 224.1(c) (6) (ii) (D), the Judicial Officer has added to the rules of procedure before the Judicial Officer new Part 959, which is to be used in all Postal Service proceedings relating to the Private Express Statutes as contemplated in §§ 310.5(b) and 320.3 (d) of Title 39, Code of Federal Regulations.

Louis A. Cox,  
*General Counsel.*

Accordingly, effective October 20, 1974, Chapter I of title 39 of the Code of Federal Regulations is amended by adding a new Part 959, reading as follows:

Sec.	
959.1	Authority for rules.
959.2	Scope of rules.
959.3	Office, business hours.
959.4	Demands for payment of postage.
959.5	Appeals from demands.
959.6	Revocations of suspension.
959.7	Notice of hearing.
959.8	Service of petition filed under § 959.6.
959.9	Filing documents for the record.
959.10	Default.
959.11	Amendment of pleadings.
959.12	Continuances and extensions.
959.13	Hearings.
959.14	Change of place of hearings.
959.15	Appearances.
959.16	Presiding officers.

959.17	Evidence.
959.18	Subpoenas.
959.19	Witness fees.
959.20	Depositions.
959.21	Transcript
959.22	Proposed findings and conclusions.
959.23	Decisions.
959.24	Exceptions to initial decision or tentative decision.
959.25	Judicial Officer.
959.26	Motion for reconsideration.
969.27	Modification or revocation of orders.
959.28	Computation of time.
959.29	Official record.
959.30	Public information.

AUTHORITY: 39 U.S.C. 204, 401- 39 CFR 924.1 [c] (6) (11) (D).

#### § 959.1 Authority for rules

These rules are issued by the Judicial Officer of the U.S. Postal Service pursuant [39 FR 33213c] to authority delegated by the Postmaster General.

#### § 959.2 Scope of rules.

These rules apply to all Postal Service proceedings in which Part 310 of this title authorizes appeals to the Judicial Officer from demands for postage for matter carried in violation of the Private Express Statutes, and in proceedings to revoke, as to any person, the suspension of provisions of the Private Express Statutes in accordance with Part 320 of this title.

#### § 959.3 Office, business hours.

The offices of the officials mentioned in these rules are located at the United States Postal Service, 475 L'Enfant Plaza West SW., Washington, D.C. 20260, and are open, Monday through Friday except holidays, during the normal business hours of the Postal Service.

#### § 959.4 Demands for payment of postage.

Final demands for payment of postage will be accompanied by a copy of these rules and will—

(a) State that the demand is final unless appealed under these rules within 15 days after receipt of the demand;

(b) Describe the transaction on which the demand is based and the provisions of law or

regulation alleged to have been violated, and

(c) State the manner in which the amount of the demand is computed.

§ 959.5 Appeals from demands.

(a) A party upon whom a demand for postage has been made may appeal from the demand by filing a petition, in triplicate, with the Docket Clerk, Judicial Officer, Department, within 15 days after receipt of the demand.

(b) The petition shall:

(1) Be signed personally by an individual petitioner, by one of the partners of a partnership, or by an officer of a corporation or association;

(2) State the reasons why the Person filing the petition (designated the "Petitioner" in these rules) believes the demand is not justified;

(3) Admit or deny each fact alleged in the demand and allege any facts upon which the Petitioner relies to show compliance with applicable laws and regulations; and,

(4) Be accompanied by a copy of the demand.

(c) Factual allegations that are not denied by the petition may be deemed to have been admitted. The demand and the petition (together with other documents meets authorized in this part) shall become the pleadings in appeals from demands.

§ 959.6 Revocations of suspension

(a); The General Counsel, or a member of his staff as he may designate may initiate a revocation of the suspension of the Private Express Statutes as provided in Part 320 of this title as to **[39 FR 33214a]** any person, by filing, in triplicate, a petition with the Docket Clerk which

(1) Names the person involved:

(2) States the legal authority under which the proceeding is initiated;

(3) States the facts in a manner sufficient to enable the person named to make answer thereto; and,

(4) Recommends the issuance of an appropriate order.

(b) *Answer.* (1)The person named in the petition (designated the "Respondent" in these rules)

shall file an answer with the Docket Clerk within 15 days after he is served with a copy of the petition in accordance with § 959.8.

(2) The answer shall contain a concise statement admitting denying, or explaining each of the allegations set forth in the petition.

(3) Any facts alleged in the petition which are not denied, or which are expressly admitted in the answer, may be considered as proved, and no further evidence regarding these facts need be adduced at the hearing.

(4) The answer shall be signed personally by an individual respondent, or in the case of a partnership, by one of the partners, or, in the case of a corporation or association, by an officer thereof.

(5) The answer shall set forth the respondent's address and the name and address of his attorney, if respondent is represented by counsel.

(6) The answer shall affirmatively state whether the respondent will appear in person or by counsel at the hearing.

(7) If the respondent does not desire to appear at the hearing in person or by counsel, the matter shall be deemed submitted for determination pursuant to paragraph (b) of § 959.10.

#### § 959.7 Notice of hearing.

When a petition is filed, the Docket Clerk shall issue a notice of hearing, stating the time and place of the hearing and the date for filing an answer which shall not exceed 15 days from the date of service of the petition, and a reference to the effect of failure to file an answer or appear at the hearing. (See § 959.5(c), 959.6(b) and 959.10.) Whenever practicable, the hearing date shall be within 30 days of the date of the notice.

#### § 959.8 Service of petition filed under § 959.6.

(a) The Docket Clerk shall cause a notice of hearing and a copy of the petition to be transmitted to the postmaster at any office of address of the respondent in which the respondent is doing business, which shall be delivered to the respondent or his agent by said postmaster or his designee. A receipt acknowledging delivery of the notice shall be secured from the respondent or his agent and forwarded to the Docket Clerk, to become a part of the official record.

(b) If, after 5 days, the postmaster or his designee, can find no person to **[39 FR 33214b]** accept service of the notice of hearing and petition pursuant to paragraph (a) of this section, the notice and copy of the petition may be delivered in the usual manner as other mail addressed to the respondent. A statement, showing the time and place of delivery, signed by the postal employee who

delivered the notice of hearing and petition shall be forwarded to the Docket Clerk and such statement shall constitute evidence of service.

§ 959.9 Filing documents for the record.

(a) Each party shall file with the Docket Clerk pleadings, motions, orders and other documents for the record. The Docket Clerk shall cause copies to be delivered promptly to other party(ies) to the proceeding and to the presiding officer.

(b) The parties shall submit three copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and state the title of the proceeding and, except initial petitions, the docket number. Any pleading or other document required by order of the presiding officer to be filed by a specified date, shall be delivered to the Docket Clerk on or before such date. The date of filing shall be entered thereon by the Docket Clerk.

§ 959.10 Default.

(a) If the respondent fails to file an answer within the time specified in the notice of hearing, he shall be deemed in default and to have waived hearing and further procedural steps. The Judicial Officer shall thereafter issue an order without further notice to the respondent.

(b) If the respondent files an answer but fails to appear at the hearing, the presiding officer shall receive petitioner's evidence and render an initial decision.

§ 959.11 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Docket Clerk. Amendments proposed thereafter shall be filed with the presiding officer.

(b) By consent of the parties, a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing and, provided that the amendment is reasonably within the scope of the proceeding initiated by the petition, the presiding officer shall make such ruling on the motion as he deems fair and equitable to the parties.

(c) When issues not raised by the pleadings, but reasonably within the scope of the proceedings initiated by the petition, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence, and to raise such issues, shall be allowed at any time upon the motion of any party.

(d) If a party objects to the introduction of evidence at the hearing on the ground that it is not

within the issues made by the pleadings, but fails to [39 FR 33214c] satisfy the presiding officer that amendment of the Pleadings would prejudice him on the merits, the presiding officer may allow the amendments and may grant a continuance to enable the objecting party to rebut the evidence presented.

(e) The presiding officer may, reasonable notice and upon such terms as are just, permit service of supplementary pleadings setting forth transactions occurrences, or events which have happened since the date of the plea sought to be supplemented and which are relevant to any of the issues involved.

#### § 959.12 Continuances and extensions

Continuances and extensions will be granted by the presiding officer except for good cause found.

#### § 959.13 Hearings.

Hearings are held at the headquarters of the Postal Service, Washington, 20260, or other locations designated by the presiding officer.

#### § 959.14 Change of place of hearings.

Not later than the date fixed for filing of the answer, a party may file a written request that a hearing be held at a place other than that designate, the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of witnesses who will testify, and,

(c) The reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

#### § 959.15 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice be the Postal Service in accordance with the rules in Part 951 of this title.

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the initial petition shall be mailed to the attorney.

(d) A respondent must promptly file a notice of change of attorney.

§ 959.16 Presiding officers.

(a) The presiding officer shall be either an Administrative Law Judicial qualified in accordance with law, or the Judicial Officer. The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause found, preside at the reception of evidence in proceed upon request of either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;**[39 FR 33215a]**

(4) Order any pleading amended upon motion of a party at any time prior to close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs in or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence; and,

(9) Render an initial decision if the presiding officer is an Administrative Law Judge, which becomes the final decision of the Postal Service unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§ 959.17 Evidence.

(a) Except as otherwise provided in these rules, the rules of evidence governing civil proceedings in matters not involving trial by jury in the District courts of the United States shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The preslding officer shall exclude irrelevant, immaterial or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received into evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) The written statement of a competent witness may be received into evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in question.

(f) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

#### § 959.18 Subpoenas.

The Postal Service is not authorized by law to issue subpoenas requiring the attendance or testimony of witnesses or the production of documents.

#### § 959.19 Witness fees.

The Postal Service does not pay fees and expenses for a respondent's witnesses or for depositions requested by a respondent.

#### § 959.20 Depositions.

(a) Not later than 5 days after the filing of respondent's answer, any party may file an application with the Docket Clerk for the taking of testimony by deposition. In support of such application, the applicant shall submit under oath or affirmation, a statement containing the **[39 FR 33215b]** reasons why such testimony should be taken by deposition, the time and place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order shall specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken, and any other necessary information.

(c) Each deponent shall first be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers, together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the

presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form or relevancy or materiality of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing, any part or all of the deposition may be offered into evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received into evidence, it shall not be considered as a part of the record. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy thereof for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States, or within a territory or possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of the deposition.[39 FR 33215c]

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer, shall be present at the examination of the witness, which fact shall be certified by the deposition officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and cause the testimony to be reduced to writing in the witness' own words.

#### § 959.21 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties by the reporter at rates not to exceed the maximum rates fixed by the contract between the Postal Service and the reporter. Copies of parts of the official record, other than the transcript,

may be obtained by the respondent from the reporter upon the payment to him of a reasonable price therefor.

(b) Changes in the official transcript may be made only when they involve errors affecting substance, and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, a party may file a motion requesting correction of the transcript. The opposing party shall within such time as may be specified by the presiding officer, notify the presiding officer in writing of his concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the presiding officer other than by agreement of the parties shall be subject to objection and exception.

#### § 959.22 Proposed findings and conclusions.

(a) Each party, except one who fails to answer the complaint or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, submit proposed findings of fact, conclusions of law and supporting reasons either in oral or written form. The presiding officer [39 FR 33216a] may also require the parties to submit proposed findings of fact and conclusions of law with supporting reasons.

(b) Proposed findings of fact, conclusions of law and supporting reasons not presented orally before the close of the hearing, shall, unless otherwise directed by the presiding officer, be filed within 15 days after the delivery of the official transcript to the Docket Clerk who shall notify the parties of the date of its receipt. The proposed findings of fact, conclusions of law and supporting reasons shall be set forth in serially numbered paragraphs, and shall state with particularity, all pertinent evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion of law shall be separately stated.

#### § 959.23 Decisions.

(a) *Oral decisions.* The presiding officer may, in his discretion, render an oral decision (an initial decision by an Administrative Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing. A party who desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings of fact and conclusions of law either orally or in writing at the conclusion of the hearing.

(b) *Written initial decision by Administrative Law Judge.* A written initial decision shall be rendered with all due speed. The initial decision shall include findings of fact and conclusions of law

with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. The initial decision shall become the final decision of the Postal Service unless an appeal is taken in accordance with § 959.24.

(c) *Written tentative or Anal decision by the Judicial Officer.* When the Judicial Officer presides at the hearing, he shall issue a final or a tentative decision. Such decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and appropriate order. The tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 959.24.

§ 959.24 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's written initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's written tentative decision.

(c) When an initial or tentative decision is rendered orally at the close of the **[39 FR 33216b]** hearing, the presiding officer may then establish and orally give notice to the parties participating in the hearing of the time limit within which exceptions must be filed.

(d) Upon receipt of the brief on appeal from an initial decision of an Administrative Law Judge, the Docket Clerk shall promptly transmit the record to the Judicial Officer. The date for filing the reply to a brief on appeal or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(e) Briefs on appeal or in support of exceptions and replies thereto shall be filed in triplicate with the Docket Clerk, and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited, with page references.

(2) A concise abstract or statement of the case.

(3) Numbered exceptions to specific findings of fact or conclusions of law of the presiding officer.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of, or in opposition to, each exception taken, together with specific references to the pertinent parts

of the record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer, no brief on appeal or in support of exceptions shall exceed 50 printed or 100 typewritten pages double spaced.

(g) The Judicial Officer will extend the time to file briefs only upon written motion for good cause found. The Docket Clerk shall promptly notify the movant of the Judicial Officer's decision on the motion. If a brief is not filed within the time prescribed, the defaulting party will be deemed to have abandoned the appeal or waived the exceptions and the initial or tentative decision shall become the final decision of the Postal Service.

§ 959.25 Judicial Officer.

The Judicial Officer is authorized (a) to act as presiding officer at hearings, (b) to render tentative decisions, (c) to render final decisions of the Postal Service, (d) to refer the record in any proceedings to the Postmaster General or the Deputy Postmaster General who will make the final decision of the Postal Service, and (e) to revise or amend these rules of practice. The entire official record will be considered before a final decision of the Postal Service is rendered. Before rendering a final decision of the Postal Service, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

§ 959.26 Motion for reconsideration.

A party may file a motion for reconsideration of a final decision of the Postal Service within 10 days after receiving [39 FR 33216c] it, or within such longer period as the Judicial Officer may fix. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

§ 959.27 Modification or revocation of orders.

A party against whom an order has been issued may file with the Docket Clerk an application for modification or revocation, addressed to the Judicial Officer. The Docket Clerk shall transmit a copy of the application to the General Counsel, who shall file a written reply within 10 days after filing, or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Docket Clerk. Thereafter an order granting or denying such application in whole or in part will be issued by the Judicial Officer.

§ 959.28 Computation of time.

A designated period of time excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 959.29 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs and other documents filed in the proceedings shall constitute the official record of the proceeding.

§ 959.30 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative and final decisions of the Postal Service. The Docket Clerk maintains the complete official record of every proceeding.

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