

## 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 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.

SOURCE: 39 FR 33211, Sept. 16, 1974, unless otherwise noted.

#### § 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. Tangible objects used for letters do not include (i) objects the material or shape and design of which make them valuable or useful for purposes other than as media for long-distance communications, unless they are actually used as media for personal and business correspondence, and (ii) outsized, rigid objects not capable of enclosure in envelopes, sacks, boxes or other containers commonly used to transmit letters or packets of letters.

(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, or the container in which it is carried, singly or with other messages, identical or different, is marked for delivery to a specific person or place, or is delivered to a specific person or place in accordance with a selective delivery plan. Selective delivery plans include delivery to particular persons or addresses by use of detached address labels or cards; address lists; memorized groups of addresses; or

"piggy-backed" delivery with addressed articles of merchandise, publications, or other items. Selective delivery plans do not include distributions of materials without written addresses to passersby on a particular street corner, or to all residents or randomly selected residents of an area. A message bearing the name or address of a specific person or place is a letter even if it is intended by the sender to be read or otherwise used by some person or persons other than or in addition to the addressee.

(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

<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 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).

## § 310.1

## 39 CFR Ch. I (7–1–25 Edition)

movement of checks or drafts within the banking system. “Checks” do not include materials accompanying the movement of checks to financial institutions 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 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 and other liens, deeds, leases, releases, articles of incorporation, papers filed in lawsuits or formal quasi-judicial proceedings, and orders of courts and of quasi-judicial bodies.

(iv) Newspapers and periodicals.

(v) Books and catalogs consisting of 24 or more bound pages with at least 22 printed, and telephone directories. Separate letters of less than 24 bound and 22 printed pages bound to other material do not qualify for this exclusion. In determining whether separate letters have been bound to other material, the following factors will be considered, along with any other relevant factors: Whether the parts are visually similar; whether the parts were printed and bound together at the same time and by the same process; whether the binding serves an important purpose and has been a longstanding practice; and whether the same individual reads all parts of the bound document. Ordinarily, books and catalogs deal with matters of interest to, and are intended for, a substantial number of recipients. In addition, books generally contain a substantial number of pages. Accordingly, this exclusion will not apply when the nature of the message conveyed, the limited numbers of published copies and of recipients, the limited number of pages, or other relevant factors suggest that it is not appropriate to treat the material as a book

or catalog. An item distributed privately, or privately and by mail, to fewer than 25 separate persons or places will generally not be treated as a book or catalog falling within this exclusion.

(vi) Matter sent from a printer, stationer, or similar source, to a person ordering such matter for use as his letters. This exclusion applies whether or not the printer, stationer, or similar source is owned by or affiliated with the person who orders such matter for use as his letters.

(vii) Letters sent to a records storage center exclusively for storage, letters sent exclusively for destruction, letters retrieved from a records storage center, and letters sent as part of a household or business relocation.

(viii) Tags, labels, stickers, signs or posters the type-size, layout or physical characteristics of which indicate they are primarily intended to be attached to other objects for reading.

(ix) Photographic material being sent by a person to a processor and processed photographic material being returned from the processor to the person sending the material for processing.

(x) Copy sent from a person to an independent or company-owned printer or compositor, or between printers and compositors, and proofs or printed matter returned from the printer or compositor to the office of the person who initially sent the copy.

(xi) Sound recordings, films, and packets of identical printed letters containing messages all or the overwhelming bulk of which are to be disseminated to the public. The “public” does not include individuals residing at the place of address; individuals employed by the organization doing business at the place of address (whether or not the actual place of employment is the place of address); individuals who are members of an organization, if an organization is located at the place of address; or other individuals who, individually or as members of a group, are reasonably identifiable to the sender.

(xii) Computer programs recorded on media suitable for direct input. For the conditions under which the Private Express Statutes are suspended for data processing materials, see § 320.2.

## United States Postal Service

## § 310.2

(b) *Packet* means two or more letters, identical or different, or two or more packets of 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 organization or 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 39 U.S.C. 601–606 (1970).

(g) The term *identical printed letters* includes letters that differ only in name, address or serial number.

[39 FR 33211, Sept. 16, 1974, as amended at 44 FR 52833, Sept. 11, 1979; 45 FR 3034, Jan. 16, 1980; 45 FR 59873, Sept. 11, 1980; 48 FR 42354, Sept. 27, 1982]

### § 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 § 310.5).

(b) Activity described in paragraph (a) of this section is lawful with respect to a letter if:

(1)(i) The letter is enclosed in an envelope or other suitable cover;

(ii) 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;

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

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

(v) Any stamps on the cover are canceled in ink by the sender; and

(vi) 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; or

(2)(i) The activity is in accordance with the terms of a written agreement between the shipper or the carrier of the letter and the Postal Service. Such an agreement may include some or all of the provisions of paragraph (b)(1) of this section, or it may change them, but it must:

(A) Adequately ensure payment of an amount equal to the postage to which the Postal Service would have been entitled had the letters been carried in the mail;

(B) Remain in effect for a specified period (subject to renewals); and

(C) Provide for periodic review, audit, and inspection.

(ii) Possible alternative arrangements may include but are not limited to:

(A) Payment of a fixed sum at specified intervals based on the shipper's projected shipment of letters for a given period, as verified by the Postal Service; or

(B) Utilization of a computer record to determine the volume of letters shipped during an interval and the applicable postage to be remitted to the Postal Service.

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

### § 310.3

### 39 CFR Ch. I (7–1–25 Edition)

(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)).

[39 FR 33211, Sept. 16, 1974, as amended at 45 FR 77029, Nov. 21, 1980]

#### § 310.3 Exceptions.

(a) *Cargo.* The sending or carrying of letters is permissible if they accompany and relate in all substantial respects to some part of the cargo or to the ordering, shipping or delivering of the cargo.

(b) *Letters of the carrier.* (1) The sending or carrying of letters is permissible if they are sent by or addressed to the person carrying them. If the individual actually carrying the letters is not the person sending the letters or to whom the letters are addressed, then such individual must be an officer or employee of such person (see § 310.3(b)(2)) and the letters must relate to the current business of such person.

(2) The fact that the individual actually carrying the letters may be an officer or employee of the person sending the letters or to whom the letters are addressed for certain purposes does not necessarily mean that he is an officer or employee for purposes of this exception. The following factors bear on qualifications for the exception: the carrying employee is employed for a substantial time, if not fulltime (letters must not be privately carried by casual 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 by the letter car-

rying 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 without compensation is permitted. Compensation generally consists of a monetary payment for services rendered. Compensation may also consist, however, of non-monetary valuable consideration and of good will. Thus, for example, when a business relationship exists or is sought between the carrier and its user, carriage by the carrier of the user's letter will ordinarily not fall under this exception; or, when a person is engaged in the transportation of goods or persons for hire, his carrying of letters "free of charge" for customers whom he does charge for the carriage of goods or persons does not fall under this exception.

(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 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.

(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 carriage of letters which enter the mail stream at some point between their origin and their destination is permissible. Except as provided in paragraph (e)(3) of this section, however, the carriage of letters

from a place where they have been opened, read, separated, or otherwise utilized, does not fall within this exception even though such letters had previously been in the mail stream. Similarly, the carriage of letters to a place where they will be consolidated or otherwise utilized does not fall within this exception even though they will subsequently enter the mail stream.

(2) Examples of permitted activities 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.

(3) The private carriage of letters from branches of an organization to a location for preparation for mailing does not constitute a consolidation. The private carriage of letters from an organization's point of mail delivery to its branches in the locality does not constitute a separation.

[39 FR 33211, Sept. 16, 1974, as amended at 44 FR 52834, Sept. 11, 1979; 45 FR 59873, Sept. 11, 1980]

#### **§ 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 of this chapter. 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 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 or the Manager, Mailing Standards, USPS Headquarters, 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.

[39 FR 33211, Sept. 16, 1974, as amended at 69 FR 54006, Sept. 7, 2004; 75 FR 12123, Mar. 15, 2010]

#### **§ 310.6 Advisory opinions.**

An advisory opinion on any question arising under this part and part 320 of this chapter may be obtained by writing the General Counsel, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-1100. A numbered series of advisory opinions is available for inspection by the public in the Library of the U.S. Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

[75 FR 12123, Mar. 15, 2010]

#### **§ 310.7 Amendment of regulations.**

Amendments of the regulations in this part and in part 320 may be made only in accordance with the rule-making provisions of the Administrative Procedure Act.

[40 FR 23295, May 29, 1975]

### **PART 320—SUSPENSION OF THE PRIVATE EXPRESS STATUTES**

Sec.

320.1 Definitions.

320.2 Suspension for certain data processing materials.

320.3 Operations under suspension for certain data processing materials.