RULES AND REGULATIONS IN THE PROCESSING, HEARING AND ADJUDICATION OF APPLICATIONS FOR AUTHORITY TO OPERATE PRIVATE EXPRESS AND/OR MESSENGER DELIVERY SERVICE, AND IN THE INVESTIG...

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Pursuant to Republic Act No. 7354 approved on April 03, 1992, and Presidential De-cree No. 240 issued on July 9,1973, the following rules and regulations are hereby promulgated:

Part I - General Provisions

Rule 1 - Title
SECTION 1. Title and Scope - These rules shall be known as the Rules and Regulations in the Processing, Hearing and Adjudication of Applications for Authority to Operate Private Express and/or Messenger Delivery Service, and in the Investigation of Complaints in connection with the Operation of such Services."

SECTION 2. Construction - These rules shall be liberally construed to protect and promote public interest and to assist the parties in obtaining just, speedy and inexpensive action or remedy.

Rule 2 - DEFINITIONS
SECTION 1. For purposes of these rules, the terms:

a. "BRANCH" refers to any station or substation directly operated and managed by private firms authorized by the DOTC to operate and express and/or messenger delivery service, for the receiving, delivery and dispatching of mails and parcels to areas within the scope of their authority.

b. "COMMITTEE" refers to the Postal Regulation Committee composed of the Chairman, the Vice-Chairman, and two (2) members, that hears, decides on, and processes applications for authority to operate private express and/or messenger delivery services, and investigates complaints and violations of applicable laws and regulations, and adjudicates administrative controversies in connection with the operation of such services.

c "DEPARTMENT" or "DOTC" refers to the Department of Transportation and Communications.

d. "EXPRESS AND/OR MESSENGERIAL DELIVERY SERVICE FIRM" (hereafter the "Firm") includes every natural or juridical person that owns, operates, manages or controls in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occassional or accidental, and for general business purposes, any service for the personal delivery to other persons, of written messages and any mail matter, except telegram. A person or his employee delivering any article owned by the former is not conducting an express and/or messengerial delivery service within the context of this Circular.

e. "EXTENSION OFFICE" refers to any station utilized not for the acceptance or posting of mails but only as drop and consolidation points for mails and parcels to be distributed and delivered to a specific area or areas.

f. "JURISDICTIONAL REQUIREMENTS" consisting of acknowledgment receipts of the copy of the Notice of Hearing together with a copy of the application by PEMAP, PPC and other affected operators, the Affidavit of

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Publication and copies of the newspapers publishing the Notice of Hearing.

g. "MAIL or MAIL MATTERS" refers to all matters authorized by the Government to be delivered through the postal service which include letters, parcels, printed materials and money orders.

h. "OPERATOR" refers to a person, natural or juridical, granted by the Department of Transportation and Communications (DOTC) authority to operate private express and/or messenger delivery services.

i. "OPPOSITOR" refers to a person, natural or juridical, who is authorized by Jaw to file; and does file a written opposition to an application for the issuance of an authority, to operate private express and/or messenger delivery services.

j. "PARCEL" means a package whose dimension and weight are specified in the Philippine Postal Corporation (PPC) Weight and Measure, containing goods or transportable property intended for delivery to an addressee whose name and address are conspicuously written on at least one of its sides.

k. "PEMAP" refers to the Private Express arid Messengerial Association of the Philippines.

l. "PEMEDES" refers to Private Express and/or Messenger Delivery Services.

m. "PRIVATE EXPRESS AND/OR MESSENGER DELIVERY SERVICE" refers to the delivery of written messages and mail matter in accordance with the following schedule:

- ordinary mail

- to be delivered to the addressee within seven (7) working days from receipt of the written message or mail matter by the Firm.

- special delivery mail

- to be delivered .within three (3) working days from receipt by the Firm.

- rush mail

– to a be delivered within twenty four (24) hours from receipt by the Firm.

n. "SECRETARY" refers to the Secretary of the Department of Transportation and Communications

Rule 3 - Pleadings
SECTI0N 1. All Petitions/Applications-for authority to operate private express and/or messenger delivery service and complaints against any violator of the applicable laws, rules and regulations shall bear the full names of the parties, their addresses and the ultimate facts constituting the cause/s of action of the petition or complaint which must be stated with particularity and sufficient definiteness. All other pleadings shall have in the caption thereof the full names of all the parties and the case number. The Petition/Application and Complaint shall be verified.

Rule4-
Application for Authority to Operate Private
Express And/Or Messenger Delivery Service

SECTION 1. WHO MAY FILE - An application to operate a private express and/or messenger delivery service may be tiled by any Filipino Citizen or a corporation or partnership duly registered with the Securities and Exchange Commission at least sixty percent (60%) of whose capital stock or shares is owned by Filipino citizen/s. Applicants seeking authority to operate in two or more administrative regions of the country must have a paid-up capital of Five Hundred Thousand (P500,000.00) Pesos, Those applying for authority to operate in Metro Manila

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or in one administrative region only must have a paid-up, capital of at least Three Hundred Thousand (P300,000.00) Pesos. Those with existing authority, to operate whose paid-up capital is less than Five Hundred Thousand (P500.000.00) Pesos, or Three Hundred Thousand (P300.000.00) Pesos, as the case may be, shall increase their capital to the appropriate levels stated in the preceding paragraph within a period of two (2) years from date of effectivity of this Circular.

SECTION 2. Form and Content of Application - The Application/Petition shall be verified and shall state, among others, the following:

a. That the applicant intends to operate a private express and/or messenger delivery service and has deposited in the bank such capital as required under Section 1 hereof, and that the applicant undertakes to update said bank deposit by way of bank certification every ninety (90) days during the hearing of the application;

b. That the applicant is a Filipino citizen or a corporation or partnership duly registered with the Securities and Exchange Commission (SEC) sixty percent (60%) of whose capital stock or shares is owned by Filipino citizen/s and that its executive and managing officers are citizens of the Philippines;

c. That the applicant shall operate in a definite geographical area in the Philippines which shall be clearly described by stating, among other things, the limits and boundaries thereof; and that the said area of operation is not yet saturated considering the population, the volume of mails and the existing operators and that the grant of authority to the applicant will redound to the improvement of the mail delivery service in the area and the public good;

d. That the applicant undertakes to post within thirty (30) days from the issuance of the Decision granting the authority, a surety bond issued by the Government Service Insurance System (GSIS) or by any accredited bonding company authorized by the Philippine Insurance Commission in the amount of FIFTY THOUSAND (P50,000.00) PESOS for those authorized to operate in two or more regions and THIRTY THOUSAND (P30,000.00) PESOS for those authorized to operate in Metro Manila only or in one region. The surety bond shall be in favor of the Department to answer for any loss of or damage to the mail or parcel while in the custody of the operator.

e. That the applicant has the financial and technical capacity to operate the service applied for,

In addition to the above-mentioned requirements, the applicant shall submit the following:

1. Copy of SEC Registration, Articles of Incorporation and By-Laws for corporations or DTI Registration and Original Application of Business Name for single proprietorships; or SEC Registration, and Articles of Partnership for partnerships;

2. The complete address of the management offices and operating stations and the land title(s) if the place is owned by the applicant or the contracts) of lease if the place is rented;

3. Notarized Letters of Intent of at least five (5) prospective clients who may be summoned to attest personally to the truthfullness of the statements in the Letters of Intent; each Letter of Intent must be renewed every sixty (60) days from date of issuance;

4. A Feasibility Study containing, among others, the organizational structure, standards for operations and recruitment of personnel, most especially the messengers, and three (3) years projection of the volume of deliveries, income, and expenses and cash flows;

5. A notarized and updated deposit statement/certification of the bank where the capital of the applicant is deposited in accordance with Section 2 (a) hereof,

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6. An undertaking under oath that the applicant shall not cause the withdrawal of said bank deposit during the pendency of the hearing and adjudication of the application, and shall not operate private express and/or messenger delivery service prior to the grant thereof;

7. A written waiver-of the confidentiality of the applicant's bank deposit specifying the account number or an exemption in writing from the Bank Secrecy Law and;

8. A list of office equipment; furniture, fixtures and motor vehicles with their corresponding actual valuation and the corresponding current official receipts of registration and certificates of registration in case of motor vehicles.

9. Sketch of office location and office lay-put

10. Bio-data of the President/Proprietor and the prospective General Manager and/or Operations Manager.

SECTION 3. FILING FEE - A filing fee for an application for a new authority or the renewal/extension thereof in the amount of THREE THOUSAND (P3, 000.00) PESOS plus FIVE HUNDRED (P500.000) PESOS for every branch shall be paid to the Cashier, of the Department. The application shall be accepted only upon presentation of the official receipt of payment.

The application for renewal/extension shall be fifed on or before the expiration date of the authority to entitle the operator concerned to continue the operation of the messengerial delivery service pending the approval of the said application. Those who fail to apply for renewal/extension on time shall be considered "colorum" operators in which case they shall be charged the amount of ONE THOUSAND (P1,000.00) PESOS as penalty for every month of delay or a portion thereof, with three (3) months grace period reckoned from the expiration date of the authority. Application for renewal/extension after the said three (3) months grace period shall no longer be accepted by the Department

SECTION 4. PUBLICATION AND NOTICE - After the payment of the required fees, docketing of the application and the ocular inspection required under Section 1, Rule 5 hereof, the Chairman of the Committee shall issue a Notice of Hearing-setting the date, time, and place for initial hearing of the case. The applicant shall cause the publication of the Notice of Hearing once a week for three (3) consecutive weeks in a newspaper of general circulation within thirty (30) days from date of receipt thereof. The Notice of Hearing shall contain the name of the applicant, case number, concise statement of the authority applied for; place, date and time of hearing. Applicant shall serve a copy of said notice together with a copy of the application and its annexes to the PEMAP; the Philippine Postal Corporation and other affected operators. Those intending to oppose the petition shall file a verified Opposition with this Department through the Committee, a copy thereof served to the Applicant/Petitioner at least fifteen (15) days before the scheduled date of initial hearing.

SECTION 5. FIXING OF RATES - The Secretary, after due notice and hearing, may fix or adjust the rates charged by the private express and/or messenger delivery service firms. Verified application for rate adjustment may be filed by operators showing the bases and justification for the adjustment prayed for. The hearing shall be opened to the public and the schedule thereof widely disseminated. The Department through the Committee shall ensure that all parties that may be affected by the adjustment are invited to the public hearing.

SECTION 6. STAMP-MARK - The authorized operator shall have a stamp-mark containing its name, the date of posting/receipt of the mail matter and the classification thereof. The stamp-mark shall be legibly imprinted on the face or side of aft articles it accepts for delivery.

SECTION 7. PROHIBITIONS - The holder of an authority shall neither lease, transfer, sell or assign the authority and the rights and privileges appurtenant thereto to any person, firm, company, corporation or other legal entity

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nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Secretary. Further, the holder of an authority shall not charge such rate for the delivery of the mails/parcels of clients lower than that of the regulated postal charges imposed on the Philippine Postal Corporation.

Rule 5
Processing and Adjudication of Application

SECTION 1. DETERMINATION OF THE NECESSITY OF THE SERVICE IN THE OPERATION AREA APPLIED FOR - Even as the burden of proving public necessity and convenience in the proposed area of operation rests with the applicant, the Department through the Committee, upon receipt of an Application/Petition or when the need arises, may conduct surveys in or studies involving the municipality/city/province/region where the applicant intends to operate, or other possible areas of operation to determine whether:

1 The proposed area is a feasible area for operation because demand for the service exists and it is not yet saturated, considering the existing operators, population and approximate volume of mails; and

2. Approval of the application will be for the good of the public and will improve existing mail delivery service in the proposed area of operation.

Results of such studies and surveys shall guide the Department in deciding whether or not certain areas proposed for the operation of private express and/or messengerial delivery services will be opened for new or additional operators.

SECTION 2. HEARING - In accordance with and in the manner provided in Rule 4 hereof, hearing shall be conducted by the Committee to receive the evidence of the applicant and the oppositors.

SECTION 3. COMPLIANCE WITH THE REQUIREMENTS - If after hearing the Committee finds that the applicant possesses all the qualifications and the technical and financial capability to operate efficiently a private express and/or messengerial delivery service, a provisional authority to operate for a period of six (6) months shall be issued thereto. Within the said six-month period; the operator-applicant shall set up an office and/or branches in accordance with, the standards of the Department, recruit and train the staff and messengers, provide the necessary facilities, equipment and materials and formalize agreements with prospective clients. The holder of provisional authority shall submit to the Committee a quarterly production report within thirty (30) days after the end of the quarter and a semi-annual management report including a list of company's employees, regular clients, furniture, fixtures and equipment in duplicate one month before the expiration of its provisional authority. For each month of delay or a portion thereof in the submission of said-reports shall make the operator liable to pay the amount of Five Hundred (P500.00) Pesos,

SECTION 4. ASSESSMENT - Within the month prior to the expiration of the provisional authority, the Committee shall conduct an assessment of the operator- applicant to determine whether or not all the requirements under the law and these rules have been complied with by the operator-applicant.

SECTION 5. FAILURE TO COMPLY WITH REQUIREMENTS - If after assessment the Committee finds that the operator-applicant failed to comply with the requirements, the provisional authority shall not be renewed and shall expire after the lapse of six (6) months. A written notification thereof shall be sent to the operator-applicant, copy furnished PEMAP.

SECTION 6. GRANT OF AUTHORITY- If after assessment, the Committee finds that the applicant complied with all the requirements under Section 3 hereof, an original authority for one (1) year may be granted thereto by the Secretary, which may be subsequently renewed, upon application, on a graduated scale of two (2) years, three (3) years, from four (4) years up to five (5) years and therefrom renewable-every five (5) years. A copy of the

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authority granted shall be furnished to PEMAP: It is understood; however, that the authority may be amended, suspended or cancelled when the public interest so requires or whenever the holder thereof has violated any order, rule or regulations prescribed by this Department.

SECTION 7. REGISTRATION FEE - A one time registration fee in the amount of FOUR THOUSAND ONE HUNDRED (P4, 100.00) PESOS shall be paid by the applicant upon the issuanee of the provisional authority under Section 6 hereof.

SECTION 8. SUPERVISION AND REGULATION FEE - An operator shall pay an annual supervision and regulation fee of THREE THOUSAND (P3,000,00) PESOS plus Five Hundred Pesos for every branch on or before January 31 of each year. Failure of the operator to pay the annual supervision and regulation fee on the due date shall make the operator liable for a penalty equivalent to Twenty Five (25%) Percent of said fee, and a surcharge of One (1%) Percent for every month of delay. The application for renewal/extension of authority of any operator shall not be acted upon until the operator submits proof of payment of the supervision and regulation fee and the penalties and surcharges, if any.

SECTION 9. MESSENGER'S WORK LICENSE - Within sixty (60) days from date of effectivity of this circular and henceforth, every operator shall secure from the DOTC, through the Committee, a Messenger's Work License for every person employed as messenger in the firm. The license which shall be valid for a period of Two (2) Years and may be renewed for the same period shall only be issued by the Committee-after ascertaining that the messenger concerned has no derogatory record. For this purpose, the operator shall submit to the Committee together with the application for license, clearances from the NBI, the Prosecutor's Office and the Regional Trial Court exercising jurisdiction over the area of operation of the firm.

The operator shall provide every messenger and Identification Card (2" x 4") that shall bear, among others, the serial number and date of issuance of the license, a 2 x 2 picture of the messenger and the name and signature of the responsible of the firm. All messengers shall always wear their ID's while in their service routes delivering mails/parcels.

A service fee of One Hundred Fifty (P150.00) Pesos shall be paid by the operator for each messenger's work license applied for.

The license issued under this section may be cancelled/revoked if after due notice and hearing the messenger concerned is found guilty of grave misconduct or dishonesty in the performance of his assigned work.

Rule 6
Hearing

SECTION 1. ORDER OF PROCEDURE - The following order of procedure shall be observed in the hearing of application:

a. The presentation of proof of compliance with the jurisdictional requirements; consisting of proof of service of Notice of Hearing together with a copy of the application to PEMAP, PPC and other affected operators, Affidavit of Publication and copies of the newspaper publishing the Notice of Hearing.

b. The presentation of evidence by the applicant to support the applications, consisting of the documents attached to the application and such relevant evidence as the applicant may present;

c. The presentation by the oppositor of the evidence in support of the opposition;

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d. The presentation by the applicant of rebuttal evidence, if any:

e. The presentation by the operator of sur-rebuttal evidence, if any. The hearing officer may, for good reasons or in furtherance of justice, permit the parties to present additional evidence;

f. The submission of the parties of their respective formal offer of evidence;

g. At the request of the parties, the filing of their respective memoranda within fifteen (15) days from receipt of the transcript of the last proceedings, extendable only once, at the discretion of the hearing officer, for another fifteen (15) days.

SECTION 2. AUTHORITY OF COMMITTEE CHAIRMAN - The Chairman of the Postal Regulation Committee shall have the authority to issue notice of hearing and subpoena to complete the attendance of witnesses and the production of books, papers and records, and to administer oath. Upon a vote of at least two of the members of the Committee, he may sign and issue cease and desist orders and show cause orders.

Part II - Uncontested Application

Rule 7
Adjudication
SECTION 1. FAILURE TO FILE OPPOSITION - The authority to operate private express and/or messengerial delivery service shall be granted only upon compliance with the requirements of the law and regulations duly proven by substantial evidence presented by the applicant The absence of an oppositor does not entitle an applicant to an automatic grant of authority to operate.

SECTION 2. FURTHER RECEPTION OF EVIDENCE - In cases of uncontested applications (where there is no oppositor), the Committee may receive the evidence of the applicant or refer the reception of evidence to a hearing Officer who shall thereafter submit his findings and recommendations to the Committee. At its discretion, the Committee may require the further reception of evidence.

Part III -
Contested Application and Complaints

Rule 8 -
General Rule to Govern Proceedings

SECTION 1. The hearing, investigation and resolution of any issue or controversy, relative to applications for authority to operate private express and/or messengerial delivery service, fixing of postal rates or complaints against courier services shall be without regard to technicalities, legal forms and technical rules of evidence. Substantial evidence shall be sufficient' to support an order or decision.

Rule 9
Hearing of Contested Application and Complaints

SECTION 1. WHO SHALL HEAR AND DECIDE APPLICATIONS - The Committee or its designated hearing officer shall hear all applications and complaints filed. However, when the exigency of the service so requires, any employee of the Department who is a lawyer or who has sufficient legal training and experience may be designated by the Secretary to act as hearing officer. The Secretary shall, upon consideration of the findings and recommendations of the Committee as duly passed upon by the Assistant Secretary for Legal and Administrative Affairs and the Undersecretary for Staff Services, decide on all applications for authority to operate private express and/or messengerial delivery service.

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SECTION 2. POSTPONENTS AND ADJOURNMENTS – The hearing may be postponed or adjourned from time to time at the sound discretion of the Committee or hearing officer. It shall be conducted in the Office of the Chairman, Postal Regulation Committee, unless the Secretary decides to have the hearing conducted in another place. No postponement or adjournment shall be allowed for a period longer than fifteen (15) days.

SECTION 3. REPORTING OF PROCEEDINGS - The testimonies of all witnesses shall be under oath arid all the minutes of proceedings shall be taken down and transcribed by the duly designated stenographer within one (1) week after the hearing.

Rule 10
Report of the Hearing Officer

SECTION 1. SUBMISSION OF THE REPORT OF THE COMMITTEE/HEARING OFFICER - The Committee/hearing officer shall submit to the Secretary, through the Assistant Secretary for Legal and Administrative Affairs and the Undersecretary for Staff Services, a report on the hearings conducted within fifteen (15) days after the receipt of transcript of last proceedings. The report shall contain a concise statement of the case and the facts, the factual and legal findings, conclusions and recommendations of the Committee. A draft Resolution or Decision reflecting the Committee's findings and conclusions shall be included in the report

Part IV-
Regulatory Authority of the Secretary

Rule 11
Powers and Duties

SECTION 1. The exclusive power and authority to regulate the postal delivery service industry and those engaged in domestic postal commerce, as provided for under R.A. 7354, shall be vested in the Secretary of the Department of Transportation and Communications and shall be exercised by him personally or through the Committee or his duly authorized representatives. The regulatory authority includes the authority to investigate and prosecute private express and/or messengerial delivery service firms or establishments, for offenses, whether civil or criminal, and to institute the necessary actions or proceedings against them.

SECTION 2. The Secretary shall exercise the following powers if, in his sound judgment, postal laws have been or are being or about to be violated.

a. to conduct searches of any vehicle, vessel or aircraft for stolen mail matter or any mail matter being transported in violation of law, whenever there is reasonable ground to believe that such prohibited mail matter is contained therein;

b. to issue search warrants under the same conditions prescribed for judicial officers, authorizing the search of any place not used as a dwelling, for any stolen mail matters;

c. to order and cause the arrest of persons and seizure of mail matters and other property for violation of any postal law;

d. to offer and pay rewards for information and services in connection with violations of the postal law.

Part V-
Reconsideration and Appeal

Rule 12
Motion for Reconsideration for Appeal

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SECTION 1. WHEN AND WITH WHOM FILED - Any party in interest who is dissatisfied with the decision or order of the Secretary may, within fifteen (15) days from receipt of notice hereof, file with the Office of the Secretary a motion for reconsideration of said decision or order.

SECTION 2. FORM OF THE MOTIONFOR RECONSIDERATION -Every motion for reconsideration shall be in writing and shall specifically in detail the particular objections against the decision or order, Only one motion for reconsideration by each party shall be entertained unless otherwise allowed by the Committee.

SECTION 3. HEARING OF THE MOTlON/OPPOSlTION- Upon filing of the opposition to the motion, the Chairman of the Committee shall schedule the motion for hearing and notify the parties thereof. On the scheduled hearing the movant may present competent evidence to support his motion and/or argue for the motion and against the opposition. The oppositor may then present competent evidence to support his opposition and/or argue for the opposition and against the motion. Thereafter the incident shall be submitted for resolution. Only one motion for reconsideration shall be entertained.

SECTION 4. EXTENSIONOF TIME TO FILE MOTION FOR RECONSIDERATION - On meritorious ground/s, one-time extension of a maximum of fifteen (15) days to file a motion for reconsideration may be granted by the Committee.

SECTION 5. APPEAL - Any party aggrieved by the decision or order of the Secretary may within thirty (30) days from receipt of the appeal to the Court of Appeals.

PART IV -
COMPLAINTS AGAINST OPERATORS

Rule 13-
PROCEDURE IN INVESTIGATION OF COMPLAINTS AGAINST OPERATORS

SECTION 1. PROCEEDINGS - Investigation may be commenced against an operator for violation of the postal laws, rules and regulations, for infidelity in the handling and treatment of articles accepted for mailing, arid for malpractice, by meant of a written sworn complaint fifed with the Office of the Chairman, Postal Regulation Committee. Anonymous complaints will not be entertained but may be used by the Committee as bases for fact-finding activities.

SECTION 2. PROCEDURE - Upon receipt of a sworn complaint, the same shall be referred to the appropriate DOTC personnel for investigation. If the Committee, on the basis of the investigation results, finds that a prima facie case exists against the operator, it shall order the operator within five (5) days from receipt of the order, to submit a written explanation to the charge/charges, together with his evidence in support of his defense.

SECTION 3. FORMAL HEARING - If the operator asks for formal hearing, the same shall be conducted in the manner similar to the procedure provided in Rule 6 and other pertinent rules hereof. Otherwise, the parties may just submit their position papers and their evidence and the Committee shall decide the complaint based on their submissions and other evidence on record.

PART VII -
MISCELLANEOUS PROVISIONS

Rule 14
Transcript of Proceedings
SECTION 1. DUTIES OF THE STENOGRAPHER - It shall be the duty of the designated stenographer of the hearing to transcribe the stenographic notes taken therein within one (1) week from said hearing.

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SECTION 2. COPY OF THE TRANSCRIPT FURNISHED TO PARTY - Copy of the transcript of stenographic notes in the hearing of a particular case or a specific part thereof shall be made available to the requesting party at his cost

Rule 15
Applicability of the Rules of Court

SECTION 1. So far as it is consistent with these rules and with the promotion of substantial justice and equity, the Rules of Court shall be suppletory to these rules.

Rule 16
Repealing Clause

All rules and regulations in connection with the authority to operate private express and/or messengerial delivery service which are inconsistent with these rules are deemed revoked or modified accordingly.

Rule 16
Effectivity

SECTION 1. These rules shall take effect fifteen (15) days after publication in a newspaper of national circulation or in the Official Gazette.

Adopted: 23 Jan. 2001

(SGD.) VICENTE C. RIVERA, JR.
Secretary

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