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SUBCHAPTER N—PROCEDURES

Rules of Procedure Before the Office of General Counsel

PART 912—PROCEDURES TO ADJUDICATE CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF THE OPERATION OF THE U.S. POSTAL SERVICE

Sec.

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912.14 Conclusiveness of remedy.

AUTHORITY: 28 U.S.C. 2671–2680; 28 CFR 14.1 through 14.11; 39 U.S.C. 409.

§ 912.1 Claims responsibility.

The General Counsel is responsible for settlement of claims made against the U.S. Postal Service under the Federal Tort Claims Act and 39 U.S.C. 2603, with authority to redelegate the functions to General Counsel staff members and other Postal Service employees.

[36 FR 12448, June 30, 1971]

§ 912.2 Applicability of Federal Tort Claims Act.

(a) The provisions of chapter 171 and all other provisions of title 28, U.S.C., relating to tort claims shall apply to tort claims arising out of the activities of the Postal Service. (39 U.S.C. 409(c)).

(b) Where the General Counsel, or the General Counsel's designee, finds a claim for damage to persons or property resulting from operation of the U.S. Postal Service to be a proper charge against the United States and it is not cognizable under 28 U.S.C. 2672, he may adjust and settle it under authority of 39 U.S.C. 2603.

[45 FR 43719, June 30, 1980, as amended at 69 FR 52607, Aug. 27, 2004]

§ 912.3 Time limit for filing.

(a) *Claim*. A claim under the Federal Tort Claims Act must be presented within two years from the date the claim accrues.

(b) *Suit*. Suit must be filed within six months after the date of mailing by certified or registered mail of notice of final denial of the claim by the Postal Service.

[45 FR 43720, June 30, 1980]

§ 912.4 Place of filing.

Claims should be filed with the Tort Claims Coordinator for the Postal Service District Office where the accident occurred, but may be filed at any office of the Postal Service, or sent directly to the Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63166–6640.

[69 FR 52607, Aug. 27, 2004]

§ 912.5 Administrative claim; when presented.

(a) For purposes of this part, a claim shall be deemed to have been presented when the U.S. Postal Service receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95, Claim for Damage or Injury, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident. A standard Form 95 may be obtained from the local District Tort Claims Coordinator, the National Tort Center, or online at usa.gov (select Government forms).

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to:

(1) The claimant's exercise of the option to file a civil action pursuant to 28 U.S.C. 2675(a);

(2) The Postal Service's issuance of a payment in the full amount of the claim; or

(3) The Postal Service's issuance of a written denial of the claim in accordance with §912.9.

[36 FR 12448, June 30, 1971, as amended at 45 FR 43720, June 30, 1980; 69 FR 52607, Aug. 27, 2004]

§912.6 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

[36 FR 12448, June 30, 1971, as amended at 45 FR 43720, June 30, 1980]

§912.7 Evidence and information to be submitted.

(a) *Death*. In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including monthly or yearly salary or earnings, if any, and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury*. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request, provided that he has, upon request, furnished the report referred to in the first sentence of this paragraph and has made, or agrees to make available to the agency or another Federal agency. A copy previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized the report referred to in the first expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time for employment, a written statement from his employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage*. In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

[36 FR 12449, June 30, 1971]

§ 912.8 Sufficiency of evidence and information submitted.

In order to exhaust the administrative remedy provided, a claimant shall submit substantial evidence to prove the extent of any losses incurred and any injury sustained, so as to provide the Postal Service with sufficient evidence for it to properly evaluate the claim.

[45 FR 43720, June 30, 1980]

§ 912.9 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notation.

(b) Prior to the commencement of suit and prior to the expiration of the 6 month period provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the postal official who issued the final denial or with the Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63166–6640, for a reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, the Postal Service shall have 6 months from the date of filing in which to make a disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final Postal Service action on a request for reconsideration shall be effected in accordance with this part.

(c) For purposes of this section, a request for reconsideration of a final denial of a claim shall be deemed to have been filed when received in the office of the official who issued the final denial or in the office of the Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63166–6640.

(d) Only one request for reconsideration of a final denial may be filed. A claimant shall have no right to file a request for reconsideration of a final denial issued in response to a request for reconsideration.

(28 U.S.C. 2671–2680; 28 CFR 14.1–14.11; 39 U.S.C. 401, 409, 2008)

[36 FR 12448, June 30, 1971, as amended at 38 FR 16868, June 27, 1973; 49 FR 19478, May 8, 1984; 69 FR 52607, Aug. 27, 2004]

§ 912.10 Action on approved claims.

In any case where the General Counsel or the General Counsel's designee, upon consideration of all the evidence submitted, finds that compensation is due a claimant, payment will be made by the U.S. Postal Service and in due

course a settlement check will be forwarded to the claimant or his representative.

[36 FR 12450, June 30, 1971, as amended at 69 FR 52607, Aug. 27, 2004]

§912.11 Exclusiveness of remedy.

The provisions of 28 U.S.C. 2679(b) provide that the remedy against the United States, as provided by sections 1346(b) and 2672 of title 28, for injury or loss or personal injury or death resulting from the operation by an employee of the Government of any motor vehicle while acting within the scope of his employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.

[45 FR 43720, June 30, 1980]

§912.12 Review by legal officers.

The authority of the Postal Service to adjust, determine, compromise, and settle a claim under the provisions of the Federal Tort Claims Act shall, if the amount of a proposed compromise, settlement, or award exceeds $5,000, be exercised only after review by a legal officer of the Postal Service.

[45 FR 43720, June 30, 1980, as amended at 69 FR 52607, Aug. 27, 2004]

§912.13 Attorneys' fees.

The provisions of 28 U.S.C. 2678 should be consulted in determining the amount of the attorneys' fees.

[36 FR 12448, June 30, 1971. Redesignated at 45 FR 43720, June 30, 1980]

§912.14 Conclusiveness of remedy.

Payment by the Postal Service of the full amount claimed or acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made pursuant to the provisions of the Federal Tort Claims Act, shall be final and conclusive on the claimant, his agent, or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim by reason of the same subject matter.

[45 FR 43720, June 30, 1980]

PART 913—PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE SUBPOENAS UNDER 39 U.S.C. 3016

Sec.
913.1 Subpoena authority.
913.2 Service.
913.3 Enforcement.
913.4 Disclosure.

AUTHORITY: 39 U.S.C. 204, 401, 404, 3005, 3016.

SOURCE: 65 FR 31266, May 17, 2000, unless otherwise noted.

§913.1 Subpoena authority.

(a) General. The General Counsel by delegation from the Postmaster General is responsible for the issuance of subpoenas in investigations conducted under 39 U.S.C. 3005(a), with authority to delegate that function to a Deputy General Counsel.

(b) Production of records. A subpoena issued by the General Counsel may require the production of any records (including computer records, books, papers, documents, and other tangible things which constitute or contain evidence) which the General Counsel considers relevant or material to an investigation.

(c) Requirements. No subpoena shall be issued until a specific case (identifying the individual or entity that is the subject) has been opened and an appropriate supervisory and legal review of a subpoena request have been performed.

(d) Requests for subpoenas. (1) A request for a subpoena shall be submitted to the Office of the General Counsel by a Postal Inspector, Inspector Attorney, or other Inspector specifically authorized by the Postal Inspection Service to submit such a request, after appropriate review by an Inspector In Charge or that person's designee.

(2) A request for a subpoena shall state the specific case, with an individual or entity identified as the subject, in which the subpoena is requested.

(3) A request for a subpoena shall contain a specific description of the

records requested, and shall state how they are relevant or material to the investigation.

(4) The General Counsel, in his or her discretion, may issue or deny the requested subpoena, or require the requesting individual to provide additional information. The General Counsel, in his or her discretion, may also honor requests to amend or supplement a request for a subpoena.

(e) Form and issuance. Every subpoena shall cite 39 U.S.C. 3016 as the authority under which it is issued, and shall command each person to whom it is directed to produce specified records at a time and place therein specified. The General Counsel shall sign the subpoena and enter the name of the individual or entity to whom it is directed.

§ 913.2 Service.

(a) Service within the United States. A subpoena issued under this section may be served by a person designated under section 3061 of title 18 at any place within the territorial jurisdiction of any court of the United States.

(b) Foreign service. Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure describe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(c) Service on business persons. Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

(1) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(2) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(3) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(d) Service on natural persons. Service of any subpoena may be made upon any natural person by—

(1) Delivering a duly executed copy to the person to be served; or

(2) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(e) Verified return. A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

§ 913.3 Enforcement.

(a) In general. Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the General Counsel may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia), and serve upon such person a petition for an order of such court for the enforcement of this part.

(b) Jurisdiction. Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under section 1291 of title 28, United States Code. Any disobedience of any

final order entered under this section by any court may be punished as contempt.

§ 913.4 Disclosure.

Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5, United States Code.

PART 916 [RESERVED]

Rules of Procedure Before the Mail Processing Department

PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES

Sec

927.1 Noncontractual carriage of international mail by vessel.
927.2 Noncontractual air service for international and military mail.
927.3 Other remedies.

AUTHORITY: 39 U.S.C. 401, 2601 Chap. 56 Section 5604; 49 U.S.C. 1357, 1471.

SOURCE: 67 FR 50353, Aug. 2, 2002, unless otherwise noted.

§ 927.1 Noncontractual carriage of international mail by vessel.

(a) *Report of infraction*. Where evidence is found or reported that a carrier of mail by vessel which has transported mail pursuant to the provisions of Chapter 4, USPS Purchasing Manual, has unreasonably or unnecessarily delayed the mails, or committed other delinquencies in the transportation of mail, has failed to carry the mail in a safe and secure manner, or has caused loss or damage to the mail, the facts will be reported to International Network Operations, Headquarters.

(b) *Review, investigation, recommendation*. International Network Operations will investigate the matter, record findings of fact, make a recommendation concerning the need for imposition of fine or penalty with reasons for the recommendation, and will advise the carrier of the recommendation.

(c) *Penalty action*. International Network Operations, upon review of the record, may impose a fine or penalty against a carrier for any irregularity properly documented, whether or not penalty action has been recommended. A tentative decision of International Network Operations to take penalty action will be set forth in detail the facts and reasons upon which the determination is based. International Network Operations will send the tentative decision, including notice of the irregularities found and the amount of fine or penalty proposed, to the carrier. The carrier may present a written defense to the proposed action within 21 days after receipt of the tentative decision. International Network Operations will advise the carrier of the final decision.

(d) *Appeal*. If the final decision includes a penalty International Network Operations will advise the carrier that it may, within 30 days, appeal the action in writing to the Vice President, Network Operations Management, U.S. Postal Service Headquarters and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, International Network Operations will close the record. When an appeal is taken, the Vice President, Network Operations Management will review the complete record the decide the appeal. He will advise the carrier of the decision in writing and will take actions consistent with that decision. The Vice President, Network Operations Management, may sustain, rescind, or compromise a fine or penalty. The decision of the Vice President, Network Operations Management on appeal shall be the final decision of the Postal Service. The Postal Service may, in its discretion, deduct from payment otherwise due the carrier an amount necessary to satisfy the penalty action taken under this section.

(e) *Details of administration*. For further administrative details, see USPS Purchasing Manual, chapter 4.

§ 927.2 Noncontractual air service for international and military mail.

(a) *Report of infraction*. Each mail handling irregularity will be reported in the prescribed format by the cognizant postal official or designated representative. As soon as possible the reporting authority will ask the local

representative of the air carrier to provide an explanation of the irregularity. A summary of the explanation, if any, will be entered in the record. A copy of the report will be provided to the local station manager of the air carrier concerned at the close of each tour or not less frequently than each 24 hours.

(b) *Carrier conferences.* At least one a month, postal officials will schedule meetings with the local representatives of the affected air carriers to discuss the reported irregularities. The carrier's representative will be advised of any irregularity for which the reporting authority will recommend penalty action. The carrier's representative will be offered the opportunity to comment on any irregularity, and any comments will be attached and/or be made part of the record. The reports on which penalty action is recommended will then be processed by International Network Operations, Postal Headquarters.

(c) *Review, investigation, penalty action.* International Network Operations will review the matter and advise the carrier of the recommendations. The carrier has 21 days from receipt of notice to dispute the recommended penalties. In those instances which the carrier has disputed the facts alleged by the reporting authority, International Network Operations will investigate the matter to resolve the differences. International Network Operations, upon review of the record, may impose a fine or penalty against an air carrier for any irregularity properly documented, whether or not penalty action has been recommended. International Network Operations will send the decision, including notice of the irregularities alleged and the amount of fine or penalty proposed to the carrier. The Postal Service may, in its discretion, deduct from payment otherwise due the air carrier an amount necessary to satisfy the penalty action taken under this section.

(d) *Appeal.* If the final decision includes a penalty, International Network Operations will advise the carrier that it may, within 30 days, appeal the action in writing to the Vice President, Network Operations Management, Postal Headquarters, and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, International Network Operations will close the file. When an appeal is taken, the Vice President, Network Operations Management, will review the complete record and decide the appeals. He will advise the carrier of the decision in writing and will take action consistent with that decision. The Vice President, Network Operations Management, may sustain, rescind, or compromise a fine or penalty. The decision of the Vice President, Network Operations Management, on appeal shall be the final decision of the Postal Service. The Postal Service, may, in its discretion, deduct from pay otherwise due the air carrier an amount necessary to satisfy the penalty action taken under this section.

(e) *Details of administration.* For further administrative details, forms, and other implementing materials adapted to the respective modes of transportation, see International Mail Operations, Handbook T–5, chapter 5.

§ 927.3 Other remedies.

The procedures and other requirements of this part apply only where the Postal Service proposes to assess penalties, fines, deductions, or damages. This part does not limit other remedies available to the Postal Service, including such remedies as summary action to withhold tender of mail to protect the public interest in the event of major irregularities such as theft, deliberate loss, damage, abandonment of the mail or service failures by the air carrier.

PART 931—RULES OF PROCEDURE GOVERNING THE COMPROMISE OF OBLIGATIONS

§ 931.1 Compromise of obligations.

Any proposition of compromise shall be submitted in writing, and the amount offered in compromise shall be deposited with the Manager, Accounting Division or the appropriate postal data center. If the offer in compromise is rejected the amount deposited will

be returned. The amount of a compromise offer must be tendered unconditionally for deposit pending the consideration of acceptance. Checks and drafts cannot be accepted as offers in compromise when they bear endorsements or instructions to the effect that the acceptance of such checks or drafts constitutes settlement in full of the claim, fine, penalty, or liability in connection with which the offer is made, except that such checks or drafts may be accepted when they are accompanied with a written waiver of the endorsements or instructions printed thereon. Offers in compromise should be transmitted or delivered to the office or officer of the Postal Service from whom demand is received for payment of the amount due.

(39 U.S.C. 401)

[26 FR 11662, Dec. 6, 1961. Redesignated at 33 FR 6291, April 25, 1968]

Rules of Procedure Before the Postal Inspection Service

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

Sec.

946.1 Scope of part.
946.2 Disposition of property of apparent owners.
946.3 Contraband and property subject to court order.
946.4 Disposition of property of unknown owners.
946.5 Disposition of property having a value of less than $200.
946.6 Disposition of abandoned property; additional period for filing claims.
946.7 Submission of claims.
946.8 Determination of claims.
946.9 Reconsideration of claims.
946.10 Record retention.
946.11 Disposition of property declared abandoned.

AUTHORITY: 5 U.S.C. 552(a); 39 U.S.C. 401(2), (5), (8), 404(a)(7), 2003, 3001.

SOURCE: 53 FR 6986, Mar. 4, 1988, unless otherwise noted.

§ 946.1 Scope of part.

This part prescribes procedures governing the disposition of recovered stolen mail matter and any other property (real, personal, tangible or intangible) obtained by the Postal Inspection Service for possible use as evidence after the need to retain such property no longer exists. Property obtained by Postal Inspectors which appears to have been loose in the mails but is not retained for use as evidence, except unlawful matter, must be treated in accordance with postal regulations concerning disposition of dead mail (see Domestic Manual (DMM) 159.4). Unlawful matter must be disposed of in accordance with § 946.3.

§ 946.2 Disposition of property of apparent owners.

Where an apparent owner of property subject to this part is known, the Chief Postal Inspector or delegate will mail, by certified mail to the apparent owner's last known address, written notice describing the property and the procedure for filing a claim for its return (see §§ 946.3 and 946.7). Such claims must be filed within 30 days from the date the notice is postmarked. If the apparent owner of the property fails to file a timely claim, the property is considered abandoned and must be disposed of as provided in § 946.6.

§ 946.3 Contraband and property subject to court order.

Claims submitted with respect to property subject to this part, possession of which is unlawful, must be denied, in writing, by certified mail and the person submitting the claim must be accorded 45 days from the postmarked date to institute judicial proceedings to challenge the denial. If judicial proceedings are not instituted within 45 days, or any extension of time for good cause shown, the contraband property must be destroyed unless the Chief Postal Inspector or delegate determines that it should be placed in official use by the Postal Inspection Service. Property subject to this part, the disposition of which is involved in litigation or is subject to an order of court, must be disposed of as determined by the court.

§ 946.4 Disposition of property of unknown owners.

(a) Where no apparent owner of property subject to this part is known, except property described in § 946.3, and the Chief Postal Inspector or delegate estimates that the fair market value of the property exceeds $200, and the property is not needed as evidence, the Chief Postal Inspector or delegate must publish notice providing the following information:

(1) A description of the property including model or serial numbers, if known;

(2) The name, address, and telephone number of the Postal Inspector in Charge who has custody of the property; and

(3) A statement inviting any person who believes that he or she is fully entitled to the property to submit a claim for its return with the Postal Inspector in Charge who is identified in the notice. Such claim must be submitted within 30 days from the date of first publication of the notice (See § 946.7).

(b) The notice under § 946.4(a) must be published once a week for three consecutive weeks in a publication of general circulation within the judicial district where the Postal Inspection Service took possession of the property.

§ 946.5 Disposition of property having a value of less than $200.

Where the owner of property subject to this part is unknown and the Chief Postal Inspector or delegate estimates that fair market value of such property is $200 or less, title to the property vests in the United States Postal Service, subject to the right of the owner to submit a valid claim as provided in § 946.6.

§ 946.6 Disposition of abandoned property; additional period for filing claims.

(a) Upon expiration of the time provided in §§ 946.2 and 946.4(a)(3) for the filing of claims or any extension thereof, and without the receipt of a timely claim, the property described in the notice is considered abandoned and becomes the property of the United States Postal Service. However, if the owner satisfies the requirements of § 946.6(b), except for property described in § 946.3, such abandoned property must be returned to the owner if a valid claim is filed within 3 years from the date the property became abandoned, with the following qualifications:

(1) Where property has been placed in official use by the Postal Inspection Service, a person submitting a valid claim under this section must be reimbursed the fair market value of the property at the time title vested in the United States Postal Service, less costs incurred by the Postal Service in returning or attempting to return such property to the owner and;

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the same amount as the last appraised value of the property prior to the sale of such property.

(b) In order to present a valid claim under § 946.6(a), the claimant must establish that he or she had no actual or constructive notice prior to the date the property became abandoned that he or she was entitled to file a claim pursuant to § 946.2 or § 946.4. Publication of notice pursuant to § 946.4 provides constructive notice unless a claimant can demonstrate circumstances which reasonably precluded his access to the published notice.

[53 FR 6986, Mar. 4, 1988, as amended at 63 FR 8126, Feb. 18, 1998]

§ 946.7 Submission of claims.

Claims submitted pursuant to this part must be submitted on Postal Service Form 1503 which may be obtained from the Inspector in Charge who has custody of the property.

§ 946.8 Determination of claims.

Upon receipt of a claim under this part, the Postal Inspection Service must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the Chief Postal Inspector or delegate who must approve or deny the claim by written decision, a copy of which must be forwarded to the claimant by certified mail. If the claim is approved, the procedures to be followed by the claimant to obtain return of the property, or its determined value, must

be stated. If the claim is denied, the decision must state the reasons therefor.

§946.9 Reconsideration of claims.

A written request for reconsideration of denied claims may be submitted within 10 days of the postmarked date of the mailing denying the claim. Such requests must be addressed to the Chief Postal Inspector or delegate and must be based on evidence recently developed or not previously presented.

§946.10 Record retention.

Records regarding property subject to this part will be retained for a period of 3 years following return of the property to its owner or a determination that the property is abandoned.

§946.11 Disposition of property declared abandoned.

Property declared abandoned, including cash, and proceeds from the sale of property subject to this part may be shared by the Postal Inspection Service with federal, state, or local law enforcement agencies. Unless the Chief Postal Inspector determines that cash or the proceeds of the sale of the abandoned property are to be shared with other law enforcement agencies, such cash or proceeds shall be deposited in the Postal Service Fund established by 39 U.S.C. 2003. The authority to make this determination may be delegated by the Chief Postal Inspector.

[59 FR 29372, June 7, 1994]

Rules of Procedure Before the Judicial Officer

PART 951—PROCEDURE GOVERNING THE ELIGIBILITY OF PERSONS TO PRACTICE BEFORE THE POSTAL SERVICE

Sec.

951.1 Authority for rules.
951.2 Eligibility to practice.
951.3 Persons ineligible for admission to practice.
951.4 Authorization of appearance may be required.
951.5 Complaint of misconduct.
951.6 Censure, suspension or disbarment; grounds.
951.7 Notice of disbarment; exclusion from practice.
951.8 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11562, June 16, 1971, unless otherwise noted.

§951.1 Authority for rules.

The Judicial Officer promulgates these rules pursuant to authority delegated by the Postmaster General.

§951.2 Eligibility to practice.

(a) Any individual who is a party to any proceeding before the Judicial Officer, the Board of Contract Appeals or an Administrative Law Judge may appear for himself or by an attorney at law.

(b) The head of any department of the Postal Service may establish such special rules and regulations pertaining to eligibility to practice before such department as he may deem to be necessary or desirable.

(c) Generally, except as provided in §951.3, any attorney at law who is a member in good standing of the Bar of the Supreme Court of the United States or of the highest court of any State, District, Territory, Protectorate or Possession of the United States, or of the District of Columbia, and is not under any order of any court or executive department of one of the foregoing governmental entities suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law may represent others before the U.S. Postal Service.

(d) When any person acting in a representative capacity appears in person or signs a paper in practice before the Postal Service his personal appearance or signature shall constitute a representation to the Postal Service that under the provisions of this part and the law he is authorized and qualified to represent the particular party in whose behalf he acts. The Postal Service does not generally take formal action or issue any certificate to show that an individual is eligible to practice before it. (See §951.4.)

§951.3 Persons ineligible for admission to practice.

(a) No person disbarred from practice before the Postal Service or in any other executive department of any of the governmental entities mentioned

in § 951.2(c) will be eligible to practice before the Postal Service until said order of disbarment shall have been revoked.

(b) Any person who, subsequently to being admitted to practice before the Postal Service, is disbarred by any governmental entity mentioned in § 951.2(c) shall be deemed suspended from practice before the Postal Service during the pendency of said order or disbarment.

(c) No person who has been an attorney, officer, clerk, or employee in the Postal Service will be recognized as attorney for prosecuting before it or any office thereof any case or matter which he was in anywise connected while he was such attorney, officer, clerk, or employee.

(d) No person coming within the prohibitions of 18 U.S.C. 203, 205, or 207, will be recognized as attorney before the Postal Service or any office thereof.

§ 951.4 Authorization of appearance may be required.

The Judicial Officer, the head of any department of the Postal Service or any Administrative Law Judge may require any person to present satisfactory evidence of his authority to represent the person for whom he appears.

§ 951.5 Complaint of misconduct.

(a) If the head of any department of the Postal Service has reason to believe, or if complaint be made to him, that any person is guilty of conduct subjecting him to suspension or disbarment, the head of such office shall report the same to the Judicial Officer.

(b) Whenever any person submits to the Judicial Officer a complaint against any person who has practiced, is practicing or holding himself out as entitled to practice before the Postal Service, the Judicial Officer may refer such complaint to the Chief Inspector for a complete investigation and report.

(c) At any time, the Judicial Officer may refer the complaint to the General Counsel for the preparation of formal charges to be lodged against and served upon the person against whom the complaint has been made.

§ 951.6 Censure, suspension or disbarment; grounds.

(a) The Judicial Officer may censure, suspend or disbar any person against whom a complaint has been made and upon whom charges have been served as provided in § 951.5 if he finds that such person:

(1) Does not possess the qualifications required by § 951.2;

(2) Has failed to conform to standards of ethical conduct required of practitioners at the Bar of any court of which he is a member;

(3) Represents, as an associate, an attorney who, known to him, solicits practice by means of runners or other unethical methods;

(4) By use of his name, personal appearance, or any device, aids or abets an attorney to practice during the period of his suspension or disbarment, such suspension or disbarment being known to him;

(5) Displays toward the Judicial Officer, Board of Contract Appeals or any Administrative Law Judge assigned to the Postal Service, conduct which, if displayed toward any court of any State, the United States, any of its Territories or the District of Columbia, would be cause for censure, suspension or disbarment; or

(6) Is otherwise guilty of misconduct or lacking in character or professional integrity.

(b) Before any person shall be censured, suspended or disbarred, he shall be afforded an opportunity to be heard by the Judicial Officer on the charges made against him. The General Counsel or his designee shall prosecute such cases.

(c) In the event the Judicial Officer is unavailable for any reason, he may assign complaints of misconduct to the Associate Judicial Officer, an Administrative Law Judge appointed pursuant to the provisions of the Administrative Procedure Act, an Administrative Judge appointed pursuant to the provisions of the Contract Disputes Act of 1978, or some other disinterested member of the headquarters staff of the Postal Service recommended by the Deputy Postmaster General, for the determinations required by § 951.5, the

conduct of the hearings, and the decision to censure, suspend, or debar persons as provided herein.

[36 FR 11562, June 16, 1971, as amended at 51 FR 16517, May 5, 1986]

§ 951.7 Notice of disbarment; exclusion from practice.

Upon the disbarment of any person, notice thereof will be given to the heads of the departments of the Postal Service and to the other Executive Departments, and thereafter, until otherwise ordered, such disbarred persons will not be entitled to practice before the Postal Service or any department thereof.

§ 951.8 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5357, Jan. 28, 1977]

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

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AUTHORITY: 39 U.S.C. 204, 401, 3005, 3012, 3016.

SOURCE: 36 FR 11563, June 16, 1971, unless otherwise noted.

§ 952.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service (See § 952.26) pursuant to authority delegated by the Postmaster General.

§ 952.2 Scope of rules.

These rules of practice shall be applicable in all formal proceedings before the Postal Service, 39 U.S.C. 3005, including such cases instituted under prior rules of practice pertaining to these or predecessor statutes, unless timely shown to be prejudicial to the respondent.

[36 FR 11563, June 16, 1971, as amended at 52 FR 36763, Oct. 1, 1987]

§ 952.3 Informal dispositions.

These rules do not preclude the disposition of any matter by agreement between the parties either before or after the filing of a complaint when time, the nature of the proceeding, and the public interest permit.

§ 952.4 Office business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, and are open Monday through Friday except holidays from 8:15 a.m. to 4:45 p.m.

[63 FR 66050, Dec. 1, 1998]

§ 952.5 Complaints.

When the the Chief Postal Inspector or his or her designated representative believes that a person is using the mails in a manner requiring formal administrative action under 39 U.S.C. 3005, he shall prepare and file with the Recorder a complaint which names the

person involved; states the name, address and telephone number of the attorney representing Complainant; states the legal authority and jurisdiction under which the proceeding is initiated; states the facts in a manner sufficient to enable the person named therein to make answer thereto; and requests the issuance of an appropriate order or orders and/or the assessment of civil penalties. Complainant shall attach to the complaint a copy of the order or orders requested which may, at any time during the proceedings, be modified. The person named in the complaint shall be known as the ''Respondent'', and the Chief Postal Inspector or his or designee shall be known as the ''Complainant.''

The term ''person'' (1 U.S.C. 1) shall include any name, address, number or other designation under or by use of which the Respondent seeks remittances of money or property through the mail.

[48 FR 55126, Dec. 9, 1983, as amended at 65 FR 32027, May 22, 2000; 67 FR 62179, Oct. 4, 2002; 71 FR 53972, Sept. 13, 2006]

§ 952.6 Interim impounding.

In preparation for or during the pendency of a proceeding initiated under 39 U.S.C. 3005, mail addressed to a respondent may be impounded upon obtaining an appropriate order from a U.S. District Court, as provided in 39 U.S.C. 3007.

§ 952.7 Notice of answer and hearing.

(a) When a complaint is filed against a Respondent whose mailing address is within the United States, the Recorder shall issue a notice of answer and hearing stating the date for filing an answer which shall not exceed 15 days from the service of the complaint, the time and place of the hearing and a reference to the effect of failure to file an answer or appear at the hearing. (*See* §§ 952.10 and 952.11.) Whenever practicable, the hearing date shall be within 30 days of the date of the notice.

(b) Where a complaint is filed against a Respondent whose mailing address is not within the United States, the Judicial Officer shall review the complaint and any supporting information and determine whether a prima facie showing has been made that Respondent is engaged in conduct warranting issuance of the orders authorized by 39 U.S.C. 3005(a) and/or the assessment of civil penalties authorized by 39 U.S.C. 3012. Where he concludes that a prima facie showing has not been made he shall dismiss the complaint. Where he concludes that a prima facie showing has been made, he shall issue a tentative decision and orders which: set forth findings of fact and conclusions of law; direct Respondent to cease and desist from engaging in conduct warranting the issuance of an order authorized by 39 U.S.C. 3005(a); direct that postal money orders drawn to the order of Respondent not be paid for 45 days from date of the tentative decision; direct that mail addressed to Respondent be forwarded to designated facilities and detained for 45 days from the date of the tentative decision subject to survey by Respondent and release of mail unrelated to the matter complained of; tentatively assess such civil penalties as he considers appropriate under applicable law; and provide that unless Respondent presents, within 45 days of the date of the tentative decision, good cause for dismissing the complaint, or modifying the tentative decision and orders, the tentative decision and orders shall become final. The Judicial Officer may, upon a showing of good cause made within 45 days of the date of the tentative decision, hold a hearing to determine whether the tentative decision and orders should be revoked, modified or allowed to become final. Should a hearing be granted, the Judicial Officer may modify the tentative decision and orders to extend the time during which the payment of postal money orders payable to Respondent is suspended and mail addressed to Respondent is detained.

[44 FR 61959, Oct. 29, 1979, as amended at 48 FR 55126, Dec. 9, 1983; 65 FR 32027, May 22, 2000]

§ 952.8 Service.

(a) Where the Respondent's mailing address is within the United States, the Recorder shall cause a notice of answer and hearing and a copy of the complaint to be transmitted to the postmaster at any office of address of the Respondent or to the inspector in

charge of any division in which the Respondent is doing business, which shall be delivered to the Respondent or his agent by said postmaster or a supervisory employee of his post office or a postal inspector. A receipt acknowledging delivery of the notice shall be secured from the Respondent or his agent and forwarded to the Recorder, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, to become a part of the official record.

(b) If, after 5 days, the postmaster or his agent can find no person to accept service of the notice of answer and hearing and complaint pursuant to paragraph (a) of this section, the notice 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 answer and hearing and complaint shall be forwarded to the Recorder and such statement shall constitute evidence of service.

(c) Where the only address against which Complainant seeks relief is outside the United States, a copy of the complaint, the tentative decision, and a copy of these rules of practice shall be sent by registered air mail, return receipt requested, by the Recorder to the address cited in the complaint. A written statement by the Recorder noting the time and place of mailing shall be accepted as evidence of service in the event a signed return receipt is not returned to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 37 FR 7321, Apr. 13, 1972; 44 FR 61959, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979; 63 FR 66050, Dec. 1, 1998]

§ 952.9 Filing documents for the record.

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

(b) The parties shall submit four 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 docket number and title of the proceeding. Any pleading or other document required by order of the presiding officer to be filed by a specified date shall be delivered to the Recorder on or before such date. The date of filing shall be entered thereon by the Recorder.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.10 Answer.

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

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

(c) 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.

(d) The answer shall set forth the Respondent's address and telephone number or the name, address and telephone number of its attorney.

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

(f) If the respondent does not desire to appear at the hearing in person or by counsel he may request that the matter be submitted for determination pursuant to paragraph (b) of § 952.11.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.11 Default.

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

(b) If the Respondent files an answer but fails to appear at the hearing, the

Respondent may, unless timely indications to the contrary are received, be deemed to have abandoned the intention to present a defense to the charges of the complaint, and the Judicial Officer, without further notice to Respondent, may issue the orders and/or assess civil penalties sought in the complaint.

[48 FR 55126, Dec. 9, 1983, as amended at 65 FR 32027, May 22, 2000]

§ 952.12 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Recorder. 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 complaint, the presiding officer shall make such ruling on the motion as he deems to be 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 complaint 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 satisfy the presiding officer that an amendment of the pleadings would prejudice him on the merits, the presiding officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

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

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.13 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause shown.

§ 952.14 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66050, Dec. 1, 1998]

§ 952.15 Change of place of hearings.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in 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 the witnesses who will testify;

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

[36 FR 11563, June 16, 1971, as amended at 63 FR 66050, Dec. 1, 1998]

§ 952.16 Appearances.

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

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See part 951 of this chapter.

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

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

§ 952.17 Presiding officers.

(a) The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer (39 U.S.C. 204). 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 shown, preside at the reception of evidence in proceedings where expedited hearings are requested by 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;

(4) Order any pleading amended upon motion of a party at any time prior to the 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 or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the 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;

(9) Render an initial decision, which becomes the final Agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 952.19 and § 952.21.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 38 FR 20263, July 30, 1973; 44 FR 61960, Oct. 29, 1979; 65 FR 32027, May 22, 2000]

§ 952.18 Evidence.

(a) Except as otherwise provided in these rules, the Federal Rules of Evidence shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding 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 in evidence.

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

(e) Authoritative writings of the medical or other sciences, may be admitted in evidence but only through the testimony of expert witnesses or by stipulation.

(f) Lay testimonials will not be received in evidence as proof of the efficacy or quality of any product or thing sold through the mails.

(g) The written statement of a competent witness may be received in 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.

(h) 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.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.19 Subpoenas.

(a) *General*. Upon written request of either party filed with the Recorder or on his own initiative, the presiding officer may issue a subpoena requiring:

(1) *Testimony at a deposition*. The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) *Testimony at a hearing*. The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of records*. In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation*. Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service*—(1) *In general.* The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on Business Persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(5) *Service on Natural Persons.* Service of any subpoena may be made upon any natural person by:

(i) delivering a duly executed copy to the person to be served; or

(ii) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(6) *Verified Return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In the case of contumacy or refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

[65 FR 32027, May 22, 2000]

§ 952.20 Witness fees.

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

§ 952.21 Depositions, interrogatories, requests for admission of fact and production of documents.

(a) Not later than 5 days after the filing of Respondent's answer, any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness and its relevancy.

(b) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, and require that the deposition be taken before a person authorized to administer oaths as required by paragraph (f) of this section.

(c) Each witness testifying upon deposition shall 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. The deposition officer shall put the witness on oath. 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 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 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 in 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 in evidence, it shall not be considered as a part of the record in the proceeding. 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 of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession,

subject to the dominion of the United States, depositions or interrogatories may be taken or certified 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 or interrogatories may be taken or certified 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 a deposition.

(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 except a witness who is a party shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. For good cause shown or by stipulation of the parties, written interrogatories and cross-interrogatories propounding questions of fact may be answered by the witness in writing, without the presence of an officer and without being recorded by a stenographic reporter, provided the answers are sworn to by the witness before a person authorized to administer an oath prescribed by paragraph (f).

(h) Not later than 5 days after the filing of Respondent's answer, any party may serve on the other party a request for the admission of specified facts. In the event the party served refuses timely to respond to the request for admissions, the presiding officer for good cause shown may require the party served to admit or deny each requested fact. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the presiding officer's order for admission or denial.

(i) Not later than 5 days after the filing of Respondent's answer, either party may file an application for the production of documents or objects. The application shall state the cause therefor and specifically identify the documents or objects and their relevance and materiality to the cause or causes in issue. The presiding officer may order the other party to produce and permit the inspection and photographing of any designated documents or objects not privileged which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify such terms and conditions in making the inspection and taking the copies and photographs.

(j) Failure of a party to comply with an order pursuant to this rule may result in the presiding officer's ruling that the disobedient party may not support or oppose designated charges or defenses or may not introduce designated matters in evidence. The presiding officer may also infer from the disobedient party's failure to comply with the order that the facts to which the order related would, if produced or admitted, be adverse to such party's interests. The admissibility of matter adduced by operation of § 952.21 shall be governed by § 952.18.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979]

§ 952.22 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 to the proceeding by the reporter at rates not to exceed the maximum rates fixed by contract between the Postal Service and the reporter. Copies of parts of the official record including exhibits admitted into evidence, other than the transcript, may be obtained by the Respondent from the Recorder upon the payment of reasonable copying charges. Items that cannot reasonably be photocopied may be photographed

and furnished in that form to Respondent.

(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, he may file a motion requesting correction of the transcript. Opposing counsel 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.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61961, Oct. 29, 1979]

§ 952.23 Proposed findings and conclusions.

(a) Each party to a proceeding, 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, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

(c) Except when presented orally before the close of the hearing, proposed orders shall state the statutory basis of the order and, with respect to orders proposed to be issued pursuant to 39 U.S.C. 3005(a)(3), shall be set forth in serially numbered paragraphs stating with particularity the representations Respondent and its representatives shall cease and desist from using for the purpose of obtaining money or property through the mail.

[48 FR 55126, Dec. 9, 1983]

§ 952.24 Decisions.

(a) *Initial decision by Administrative Law Judge*. A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The initial decision shall become the final Agency decision unless an appeal is taken in accordance with § 952.25.

(b) *Tentative or final 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 and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The tentative decision shall become the final Agency decision unless exceptions are filed in accordance with § 952.25.

(c) *Oral decisions.* The presiding Officer may 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 when the nature of the case and the public interest warrant. 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, conclusions, and proposed orders either orally or in writing at the conclusion of the hearing.

[48 FR 55126, Dec. 9, 1983]

§ 952.25 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 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 tentative decision.

(c) If an initial or tentative decision is rendered orally by the presiding officer at the close of the hearing, he may then orally give notice to the parties participating in the hearing of the time limit within which an appeal must be filed.

(d) The date for filing the reply to an appeal brief 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 upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder 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 in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

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

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed or 100 typewritten pages double spaced.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. The Recorder shall promptly notify the applicant of the decision of the Judicial Officer on the application. If the appeal brief or brief in support of exceptions 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 Agency decision.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.26 Judicial Officer.

The Judicial Officer is authorized: (a) To act as presiding officer at hearings, (b) to render tentative decisions, (c) to render final Agency decisions, (d) to issue Postal Service orders for the Postmaster General, (e) to refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final Agency decision, (f) to remand a case to the presiding officer for consideration, (g) to revise or amend these rules of practice. In determining appeals from initial decisions or exceptions to tentative decisions (*see* § 952.24 (a) and (b) *supra*), the entire official record will be considered before a final Agency decision is rendered. Before rendering a final Agency decision, the Judicial Officer may order the hearing reopened for the

presentation of additional evidence by the parties.

[44 FR 61961, Oct. 29, 1979]

§ 952.27 Motion for reconsideration.

A party may file a motion for reconsideration of a final agency decision within 10 days after receiving 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.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973]

§ 952.28 Orders.

(a) If an order is issued which prohibits delivery of mail to a respondent it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

(b) If an order is issued which requires the Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the proceeding and a copy thereof shall be served upon the Respondent or his agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.29 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the Chief Postal Inspector or his or her designee, 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 Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[48 FR 55127, Dec. 9, 1983, as amended at 71 FR 53972, Sept. 13, 2006]

§ 952.30 Supplemental orders.

When the Chief Postal Inspector or his or her designee or his designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address he may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the name or names allegedly used. Notice shall then be given by the Recorder to the person that the order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

[48 FR 55127, Dec. 9, 1983, as amended at 71 FR 53972, Sept. 13, 2006]

§ 952.31 Computation of time.

A designated period of time under these rules 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.

§ 952.32 Official record.

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

§ 952.33 Public Information.

The Librarian of the Postal Service maintains for public inspection in the

Library copies of all initial, tentative and final Agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[48 FR 55127, Dec. 9, 1983, as amended at 67 FR 62179, Oct. 4, 2002]

§ 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5357, Jan. 28, 1977]

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

Sec.

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 59 FR 31538, June 20, 1994, unless otherwise noted.

§ 953.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing of a written appeal with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[63 FR 66050, Dec. 1, 1998]

§ 953.3 Appeal.

The appeal shall:

(a) Identify the appellant;

(b) Describe or be accompanied by a copy of the determination or ruling being appealed;

(c) Describe the character or content of the matter the appellant wishes to have carried and delivered by the U.S. Postal Service;

(d) Request review of the determination or ruling, specifying each and every reason why the appellant believes the determination or ruling should be reversed;

(e) Indicate whether the appellant desires to have an oral hearing or, instead, to have the case decided solely on the basis of the written record (i.e., the appeal, the General Counsel's or Chief Postal Inspector's or his or her designee's reply reply, and any documents submitted by the parties pursuant to an order of the presiding officer); and

(f) Bear the signature, typed or printed name, title, business address, and telephone number of any attorney at law representing the appellant in bringing the appeal, and of each individual appellant or, if the appellant is a partnership, corporation, limited liability company, or unincorporated association, of the managing partner, chief executive officer, chief operating officer, or other officer authorized to bind the organization.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

§ 953.4 Service of notice; Reply; Motion for summary judgment.

(a) *Service of notice.* (1) Upon receiving the appeal, the Recorder shall issue a notice specifying that the Postal Service General Counsel's or Chief Postal Inspector's or his or her designee's reply shall be filed within 15 days of receipt of the notice; and the time and place of the hearing (if one was requested).

(2) The Recorder shall promptly serve this notice on the parties as follows:

(i) The notice, with a copy of the appeal, shall be sent to the General Counsel or the Chief Postal Inspector or his or her designee at Postal Service headquarters.

(ii) When the appellant's address is within the United States, the notice, with a copy of the appeal, shall be sent to the postmaster at the office that delivers mail to the appellant's address. The postmaster shall be instructed that, acting personally or through a supervisory employee or a postal inspector, he or she is to serve these documents on the appellant. If the appellant cannot be found within 3 days, the postmaster shall send these documents to the appellant by ordinary mail and forward a statement to the Recorder that is signed by the delivering employee and that specifies the time and place of delivery.

(iii) When the appellant's address is outside the United States, the notice, with a copy of the appeal, shall be sent to the appellant by registered airmail, return receipt requested. A written statement by the Recorder, noting the time and place of mailing, shall be accepted as proof of service in the event a signed and dated return receipt is not received.

(b) *Reply*. The General Counsel or the Chief Postal Inspector or his or her designee shall file a written reply, in triplicate, with the Recorder, within the aforementioned 15-day period or any extension granted by the presiding officer for good cause shown. If the General Counsel's or the Chief Postal Inspector's or his or her designee's reply fails to address any allegation in the appeal, that allegation shall be deemed admitted.

(c) *Motion for summary judgment*. Upon motion of either the General Counsel, the Chief Postal Inspector, or his or her designee, or the appellant, or on the presiding officer's own initiative, the presiding officer may find that the appeal and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or reversing the determination or ruling. The initial decision shall become the final Agency decision if a timely appeal is not taken.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

§ 953.5 Hearings.

(a) In general, admissibility of evidence at hearings conducted under this part hinges on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, or by needless presentation of cumulative evidence. Testimony shall be given under oath or affirmation, and witnesses are subject to cross-examination. Stipulations of fact are encouraged and may be received in evidence.

(b) Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall be a part of the transcript.

(c) Formal exceptions to the rulings of the presiding officer made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, when the ruling of the presiding officer is made or sought, makes known the action he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

§ 953.6 Compromise and informal dispositions.

Either party may request the other to consider informal disposition of any question of mailability, and the scheduled hearing date may be postponed by the presiding officer for such period of time as may be necessary to accommodate settlement discussions between the parties.

§ 953.7 Default; Appearances.

If a timely reply to the appeal is not filed, the presiding officer shall refer the appeal to the Judicial Officer, who may find that the General Counsel or the Chief Postal Inspector or his or her designee is in default. Whenever the General Counsel or the Chief Postal Inspector or his or her designee has been deemed to be in default, the Judicial Officer shall take whatever action on the appeal he deems appropriate. If an oral evidentiary hearing is to be held, the appellant may appear at the hearing in person or by counsel. If either party fails to appear at the hearing,

the presiding officer shall receive the evidence of the party appearing and render a decision.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

§ 953.8 Location of hearing.

Unless otherwise ordered by the presiding officer, the hearing shall be held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, on the date set in the notice.

[63 FR 66050, Dec. 1, 1998]

§ 953.9 Change of place of hearing.

(a) Not later than the date fixed for the filing of the reply, a party may file a motion that the scheduled hearing be held at a place other than that designated in the notice. The motion shall include a supporting statement outlining:

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

(2) The names and addresses of the witnesses who will testify; and

(3) The reasons why such evidence cannot be presented in Arlington, VA.

(b) In ruling on the motion, the presiding officer shall consider the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[59 FR 31538, June 20, 1994, as amended at 63 FR 66050, Dec. 1, 1998]

§ 953.10 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law (5 U.S.C. 3105) and assigned by the Judicial Officer (39 U.S.C. 204), or the Judicial Officer, may at his discretion, elect to preside at the reception of evidence. The Judicial Officer shall assign cases to Administrative Law Judges upon rotation if practicable.

§ 953.11 Proposed findings of fact and conclusions of law.

Proposed findings of fact and conclusions of law shall be submitted orally or in writing at the conclusion of the hearing, or otherwise, as ordered by the presiding officer.

§ 953.12 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable after the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision shall become the decision of the Postal Service if an appeal is not perfected. When the Judicial Officer presides at the hearing, his powers shall include those of an Administrative Law Judge, but the Judicial Officer may render either an initial or final decision. Exceptions may be filed to an initial decision rendered by the Judicial Officer in accordance with § 953.13.

§ 953.13 Appeal from initial decision.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§ 953.14 Final Agency decision.

The Judicial Officer shall render a final Agency decision. The decision shall be served upon the parties and the postal official having custody of any mail detained pursuant to the determination or ruling.

§ 953.15 Expedition.

For the purpose of further expedition, either party may move to have the hearing held at an earlier date than that specified in the notice. Either party may also move to have the initial decision (if an Administrative Law Judge or the Judicial Officer is presiding) or the final Agency decision (if the Judicial Officer is presiding) rendered orally at the conclusion of the hearing. The presiding officer may grant or deny any such motion. The parties may, with the concurrence of the Judicial Officer, agree to waive any of the procedures established in these rules.

§ 953.16 Disposition.

Mail matter found to be nonmailable shall be held at the post office where detained for a period of 15 days from

the date of the Postal Service decision, unless that period is extended by the Judicial Officer. During this holding period, the appellant may apply for the withdrawal of the matter. If any such application is made, the General Counsel or Chief Postal Inspector or his or her designee shall be given notice and the opportunity to oppose the application. Upon the expiration of the holding period with no application having been made, the Judicial Officer shall order that the matter be disposed of in accordance with 39 U.S.C. 3001(b). If a timely application is made, the Judicial Officer shall consider the application and any reasons advanced by the General Counsel or Chief Postal Inspector or his or her designee for denying the application. The Judicial Officer shall thereafter order either that the matter be returned to the applicant or that it be disposed of in accordance with 39 U.S.C. 3001(b).

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

§ 953.17 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 954—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION, OR REVOCATION OF PERIODICALS MAIL PRIVILEGES

Sec.

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11567, June 16, 1971, unless otherwise noted.

§ 954.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 954.2 Scope of rules.

The rules of practice shall apply to all Postal Service proceedings concerning applications, denials, suspensions and revocations of Periodicals mailing privileges arising under former title 39 U.S.C. 4351, 4352, 4353, 4354, 4355, 4356, and 4369 as continued by sec. 3 of the Postal Reorganization Act (Pub. L. 91–375).

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.3 Informal dispositions.

These rules do not preclude the informal dispositions of Periodicals mailing privilege matters before or after institution of proceedings.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.4 Office business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078 and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

[63 FR 66050, Dec. 1, 1998]

§ 954.5 Application.

A publisher may file an application for Periodicals mailing privileges. (See § E213 of the Domestic Mail Manual.) An authorized administrative official of the Postal Service (hereinafter called ''the authorized official'') rules upon all applications. If he or she denies the application he or she shall notify the publisher specifying the reasons for his or her denial and attaching

a copy of these rules. Before taking action on an application, the authorized official may call upon the publisher for additional information or evidence to support or clarify the application. Failure of the publisher to furnish such information or evidence may be cause for the authorized official to deny the application as incomplete or, on its face, not fulfilling the requirements for entry.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 42 FR 30504, June 15, 1977; 62 FR 66998, Dec. 23, 1997]

§ 954.6 Revocation or suspension.

When the authorized official determines that a publication is no longer entitled to Periodicals mailing privileges, he or she shall issue a ruling of suspension or revocation to the publisher at the last known address of the office of publication stating the reasons and attaching a copy of these rules.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 62 FR 66998, Dec. 23, 1997]

§ 954.7 Failure to appeal proposed action.

A ruling of the authorized official shall become final upon failure of the publisher to file a petition in accordance with the requirements of § 954.8(b).

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.8 Pleading.

(a) *Place of filing*. Parties shall file an original and three copies of all documents of record, unless otherwise ordered by the presiding officer with the Recorder of the Postal Service, who shall cause copies to be delivered to the other parties and to the presiding officer. Service is ordinarily made on the private parties by certified mail and delivery is deemed complete when a document or notice of its arrival is left at the designated address. The Recorder shall maintain a docket and the files in all proceedings.

(b) *Petition*. A publisher may appeal from a ruling of the authorized official by filing a petition within 15 days of the receipt of the ruling unless the time is extended by the authorized official. The petition shall state the reasons why the publisher (designated ''Petitioner'' in the proceeding) believes the ruling of the authorized official is erroneous and shall provide the address at which documents may be served on the Petitioner. The petition shall also allege facts showing compliance with each provision of law or regulation on which the publisher's claim to Periodicals mail privileges is based. The publisher shall attach to his or her petition a copy of the letter of the authorized official denying, suspending or revoking Periodicals mail privileges.

(c) *Notice of hearing*. Upon receipt of the petition the Recorder shall set a date for the hearing and issue a notice of hearing to the parties stating the time and place of the hearing, the date for filing an answer, and the name of the presiding officer.

(d) *Answer*. The authorized official (designated the ''Respondent'' in the proceeding) shall answer the petition within 15 days after filing and admit or deny each allegation of the petition.

(e) *Amendment*. An amendment of a pleading may be offered by any party at any time prior to the close of the hearing. If the presiding officer deems it appropriate to permit the amendment of a pleading, he or she may impose such conditions, by way of continuance of the hearing date or otherwise, as he or she considers necessary to assure a fair hearing.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 62 FR 66998, Dec. 23, 1997]

§ 954.9 Default.

If a publisher fails to appear at the hearing, the presiding officer may: (a) Dismiss the petition; (b) order the petitioner to show cause within 30 days from the date of the order why an order of dismissal should not be entered, and thereafter enter such order as the presiding officer deems to be appropriate. If the petition is dismissed by order of an Administrative Law Judge, the dismissal may be appealed to the Judicial Officer within 15 days from the date of the order.

§ 954.10 Intervention or other participation.

To intervene or otherwise participate in a proceeding, any person may file a timely application in accordance with § 954.8(a). A timely application is one which will not unduly delay the proceeding. The application shall state whom the potential intervenor represents, his or her interest, the extent to which he or she desires to participate, and the evidence he or she seeks to introduce. The presiding officer shall fix the time within which the parties shall answer the application. The presiding officer shall grant or deny the application on such terms and conditions as he or she deems appropriate. In so doing the presiding officer will consider, among other things, whether intervention or other participation is consistent with the timely and proper adjudication of the rights of the original parties.

[31 FR 5198, Mar. 31, 1966. Redesignated at 31 FR 16270, Dec. 20, 1966; 62 FR 66998, Dec. 23, 1997]

§ 954.11 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66050, Dec. 1, 1998]

§ 954.12 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his or her behalf at a place other than that designated for hearing in the notice. He or she shall support his request with a statement setting forth:

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

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

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997; 63 FR 66050, Dec. 1, 1998]

§ 954.13 Appearances.

(a) The General Counsel of the Postal Service or a member of his or her staff designated by him or her shall represent the authorized official.

(b) A publisher or intervenor may appear and be heard in person or by attorney. Attorneys may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See part 951 of this chapter.

(c) An attorney representing a publisher or intervenor shall file a written authorization from the publisher or intervenor before he or she may participate in the proceeding. The publisher or intervenor must promptly file a notice of change of attorneys.

(d) When a publisher or intervenor is represented by an authorized attorney all subsequent pleadings shall be served upon the attorney.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.14 Presiding officers.

(a) The Chief Administrative Law Judge shall assign each case to an Administrative Law Judge qualified in accordance with law to preside over the hearing. Such assignments shall be made, so far as practical, in rotation.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon matters of evidence and procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the 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 on any matter upon which he or she is required to rule;

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

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

(9) Render an initial decision.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 38 FR 20263, July 30, 1973; 62 FR 66998, Dec. 23, 1997]

§ 954.15 Judicial Officer.

The Judicial Officer is authorized (a) to act as presiding officer at hearings and (b) to render a final Postal Service Decision for the Postmaster General. On appeal from an Initial Decision of an Administrative Law Judge, the Judicial Officer will consider the entire record including the initial decision and the exceptions to that decision. Before any final agency decision has been rendered, the Judicial Officer may order the hearing reopened for the presiding officer to take additional evidence.

§ 954.16 Procedure.

(a) *Evidence*. The general rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States apply. The rules may be relaxed to the extent that the presiding officer may deem proper to insure an adequate and fair hearing. The presiding officer may exclude irrelevant or repetitious evidence.

(b) *Subpoenas*. The Postal Service is not authorized to issue subpoenas.

(c) *Fees*. The Postal Service does not pay fees and expenses for witnesses of, or depositions requested by, the publisher or intervenor.

(d) *Depositions*. Depositions may be taken as follows:

(1) Not later than 5 days after the filing of the authorized officials's answer, any party may file application with the presiding officer for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the 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.

(2) If the application is granted, the order for the taking of the deposition will 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.

(3) Each witness testifying upon deposition shall be duly sworn by the deposition officer 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 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.

(4) At the hearing any part or all of the deposition may be offered in 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 in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(5) 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 of the deposition for the official record, and shall serve one copy upon the opposing party.

(6) Within the United States or within a territory or insular 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 a deposition.

(7) 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 officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.17 Transcript.

(a) A contract reporter of the Postal Service under the supervision of the presiding officer shall report hearings. The reporter shall supply the parties with copies of the transcript at rates not to exceed those fixed by contract between the Postal Service and the reporter.

(b) Changes in the official transcript may be made only when they involve substantial errors. A party may file a motion for correction of the official transcript within 10 days after his or her receipt of the transcript or any part thereof. Other parties shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing if they object to the requested corrections. Failure of a party to interpose timely objection to a proposed correction may be considered by the presiding officer to be concurrence. The presiding officer shall then specify the corrections to be made in the transcript. He or she may on his or her own initiative order corrections in the transcript after notice to the parties subject to their objection.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.18 Proposed findings and conclusions.

(a) A party to a proceeding may submit proposed findings of fact and conclusions of law to the presiding officer. The presiding officer shall determine whether they shall be oral or written. The presiding officer may require parties to a proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. When the proposed findings and conclusions are not submitted orally they shall be filed within 15 days after delivery of the official transcript to the Recorder. The Recorder shall notify the parties of the filing date which shall be the same for both parties. If not submitted by that date, the findings and conclusions will not be considered or included in the record.

(b) Except when presented orally, proposed findings of fact and conclusions of law shall be set forth in numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits relied upon to support the conclusions proposed. Each proposed conclusion shall be separately stated.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.19 Initial decision.

(a) Upon request of either party the presiding officer may render an oral initial decision at the close of the hearing when the nature of the case and the public interest warrant. If a party desires an oral initial decision he or she shall notify the presiding officer and the opposing party at least 5 days prior to the date set for hearing. Parties may then submit proposed findings and conclusions orally or in writing at the conclusion of the hearing.

(b) If an oral initial decision is not rendered, the presiding officer shall render a written initial decision with all due speed after the parties have submitted all posthearing material. The initial decision shall become the final agency decision unless it is appealed.

(c) The initial decision shall include findings upon all material issues of fact

and law presented on the record and the reasons for those findings.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.20 Appeals.

(a) A party may appeal to the Judicial Officer from an initial decision by filing exceptions in a brief on appeal within 15 days from the receipt of a written or oral initial decision.

(b) The time for the filing of the reply brief is 10 days after receipt of the appeal brief. No additional briefs shall be received unless requested by the Judicial Officer.

(c) Appeal briefs shall contain the following matter in the order indicated:

(1) A subject index of the matters presented with page references;

(2) A table of cases alphabetically arranged;

(3) A list of statutes and texts cited with page references;

(4) A concise abstract or statement of the case;

(5) Numbered exceptions to the findings and conclusions of the presiding officer and the reasons for the exceptions.

(d) Reply briefs shall contain paragraphs (c) (1), (2), and (3) of this section and the reasons for opposing the exceptions.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.21 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of a final Agency decision.

§ 954.22 Continuances.

For good cause shown, continuances or extensions may be granted by the presiding officer. Similar action may be taken by the Judicial Officer when the proceeding is on appeal.

§ 954.23 Computation of time.

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

§ 954.24 Official record.

The pleadings, orders, exhibits, transcript of testimony, briefs, decisions and other documents filed in the proceeding constitute the official record of the proceeding.

§ 954.25 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial and final Agency decisions. The Recorder of the Postal Service maintains a complete official record of every proceeding. A person may examine a record upon authorization by the Judicial Officer.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.26 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

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AUTHORITY: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

SOURCE: 41 FR 7408, Feb. 18, 1976, unless otherwise noted.

§955.1 Jurisdiction, procedure, representation of parties.

(a) *Jurisdiction for considering appeals.* The U.S. Postal Service Board of Contract Appeals (Board) shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. In addition the Board shall have jurisdiction over other matters assigned to it by the Postmaster General. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Postmaster General himself.

(b) *Organization and location of the Board.* (1) The Board is located in Arlington, VA and its mailing address is 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Administrative Judges of the Postal Service. All members of the Board shall be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board.

(c) *Decisions on questions of law.* When an appeal is taken pursuant to a Disputes Clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(d) *Board of contract appeals procedure*—(1) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(2) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(3) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(4) *Time, computation, and extensions.* (i) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday in which event the period shall run to the end of the next business day.

(iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor.

(5) Place of filings. Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its office at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(e) *Representation of parties*. Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

[41 FR 7408, Feb. 18, 1976, as amended at 43 FR 60275, Dec. 27, 1978; 60 FR 57938, Nov. 24, 1995; 63 FR 66050, Dec. 1, 1998]

PRELIMINARY PROCEDURES

§ 955.2 Appeals, how taken.

Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

§ 955.3 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 955.7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 955.4 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

§ 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) *Duties of contracting officer*. Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through Postal Service counsel an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time above specified Postal Service counsel shall furnish the appellant a copy of each document he transmits to the Board, except those stated in paragraph (a)(2) of this section, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice,

and those stated in paragraph (d) of this section.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, furnishing two copies of such documents to the Government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 955.14 and 955.21.

§ 955.6 Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

§ 955.7 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 955.8 Amendments of pleadings or record.

(a) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his

pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in § 955.5, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the documentation required pursuant to § 955.5 (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 955.9 Hearing election.

Upon receipt of respondent's answer or the notice referred to in the last sentence of § 955.7(b), appellant shall advise whether he desires a hearing as prescribed in §§ 955.18 through 955.26, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in § 955.12. In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or accelerated procedure prescribed in § 955.13.

[41 FR 7408, Feb. 18, 1976, as amended at 60 FR 57938, Nov. 24, 1995]

§ 955.10 Prehearing briefs.

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 955.9. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 955.11 Prehearing or presubmission conference.

Whether the case is to be submitted pursuant to § 955.12, or heard pursuant to §§ 955.18 through 955.26, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a Board Member for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board Member and this writing shall thereafter constitute part of the record.

§ 955.12 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to § 955.14. Submission of the case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 955.24.

§ 955.13 Optional small claims (expedited) and accelerated procedures.

(a) *The SMALL CLAIMS (EXPEDITED) Procedure.* (1) The SMALL

CLAIMS (EXPEDITED) procedure is available solely at the election of the appellant. Such election requires decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure.

(2) The appellant may elect this procedure when

(i) There is a monetary amount in dispute and that amount is $50,000 or less, or

(ii) There is a monetary amount in dispute and that amount is $150,000 or less and the appellant is a small business concern (as that term is defined in the Small Business Act and regulations promulgated under the Act).

(3) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any, within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. If either party requests an oral hearing in accordance with § 955.9, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under § 955.18. If a hearing is not requested by either party, the appeal shall be deemed to have been submitted under § 955.12 without a hearing.

(4) Promptly after receipt of the appellant's election of the SMALL CLAIMS (EXPEDITED) procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated at the Board's discretion as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. In so doing, the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

(5) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his or her discretion, at the conclusion of the hearing and after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions of law, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a printed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion for reconsideration under § 955.30.

(6) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.

(b) *The ACCELERATED Procedure.* (1) This procedure is available solely at the election of the appellant and shall apply only to appeals where there is a monetary amount in dispute and the amount in dispute is $100,000 or less. Such election requires decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure.

(2) Promptly after receipt of the appellant's election of the ACCELERATED procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure.

(3) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be

rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. In cases where the amount in dispute is $50,000 or less and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, convert the appeal to a SMALL CLAIMS (EXPEDITED) proceeding and at the conclusion of the hearing, after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions of law, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a printed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 955.30.

(c) At the request of Respondent, or on its own initiative, the Board may determine whether the amount in dispute and/or the appellant's status make the election of the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure inappropriate.

(d) *Motions for Reconsideration in Cases Arising Under § 955.13.* Motions for reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(e) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

[72 FR 35622, June 29, 2007]

§ 955.14 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in § 955.5, and to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 955.15 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by

the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 955.16 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 955.15.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

§ 955.17 Service of papers.

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

HEARINGS

§ 955.18 Where and when held.

Hearings will ordinarily be held in the Arlington, VA, area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

[41 FR 7408, Feb. 18, 1976, as amended at 60 FR 57938, Nov. 24, 1995; 63 FR 66050, Dec. 1, 1998]

§ 955.19 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

§ 955.20 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 955.12.

§ 955.21 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 955.22 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding officer shall otherwise order. If the testimony of a witness is not given under oath, the Board may warn the witness that his statements may be subject to the provisions of Title 18, U.S.C., sections 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 955.23 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 955.24 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding officer at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

§ 955.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Reporter and the U.S. Postal Service.

§ 955.26 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 955.27 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any State, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 955.28 The respondent.

Postal Service counsel, designated by the General Counsel, will represent the interest of the Government before the Board. Counsel shall file a notice of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and

Postal Service Counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

DECISIONS

§ 955.29 Decisions.

Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Arlington, VA. Decisions of the Board will be made solely upon the record, as described in § 955.14.

[41 FR 7408, Feb. 18, 1976, as amended at 63 FR 66050, Dec. 1, 1998]

MOTION FOR RECONSIDERATION

§ 955.30 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

DISMISSALS

§ 955.31 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 955.32 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

EX PARTE COMMUNICATIONS

§ 955.33 Ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

§ 955.34 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE AND APPLICABILITY

§ 955.35 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or

transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) *Testimony at a hearing*. The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers*. In addition to (1) and (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation*. Each party is expected (1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) To secure voluntary attendance of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas*. (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to quash or modify*. Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance*. (1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*. (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena*. In case of contumacy or refusal to obey a subpoena by a person who resides, if found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

[44 FR 13015, Mar. 9, 1979. Redesignated and amended at 60 FR 57939, Nov. 24, 1995]

§ 955.36 Effective Dates and Applicability.

The provisions of §§ 955.9 and 955.13 took effect on October 1, 1995. Pursuant to the Contract Disputes Acts of 1978 (41 U.S.C. 601–613), §§ 955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective dates.

[60 FR 57939, Nov. 24, 1995]

PART 956 [RESERVED]

PART 957—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DEBARMENT AND SUSPENSION FROM CONTRACTING

Sec.
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957.28 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11574, June 16, 1971, unless otherwise noted.

§ 957.1 Authority for rules.

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. secs. 204, 401; chapter 3, section 7 of the Postal Service Purchasing Manual).

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§ 957.2 Scope of rules.

The rules in this part shall be applicable in all formal proceedings before the Postal Service pertaining to hearings initiated under chapter 3, section 7 of the Postal Service Purchasing Manual.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§ 957.3 Definitions.

(a) the term Vice President means a Vice President with purchasing authority in the Postal Service or the Vice President's representative for the purpose of carrying out the provisions of chapter 3, section 7 of the Postal Service Purchasing Manual.

(b) The term *General Counsel* includes the General Counsel's authorized representative.

(c) The term *Judicial Officer* includes the Acting Judicial Officer.

(d) *Debarment* means, in general, an exclusion from Government contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.

(e) *Suspension* means a disqualification from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence of engaging in criminal, fraudulent, or seriously improper conduct.

(f) *Respondent* means any individual, firm or other entity which has been served a written notice of proposed debarment pursuant to chapter 3, section 7 of the Postal Service Purchasing Manual.

(g) The Recorder means the Recorder of the United States Postal Service,

2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[36 FR 11574, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§ 957.4 Initiation of debarment proceedings.

(a) A Vice President shall initiate a debarment proceeding by serving upon the proposed Respondent a written notice of proposed debarment in the manner hereinafter (§ 957.8(d)) provided for the service of all other papers.

(b) The notice shall state:

(1) That debarment is being considered;

(2) The reasons for the proposed debarment;

(3) The period of debarment and the proposed effective date thereof;

(4) That the debarment will not become effective until after a hearing if such hearing is requested within 20 days following the receipt of the notice; and

(5) That the request for a hearing is to be submitted in the manner prescribed by the rules in this part, a copy of which shall be enclosed with the notice.

(c) If no hearing is requested within 20 days following the receipt of the notice, the action of the Vice President set forth in the notice shall become the final agency determination without further notice to the Respondent.

(d) The party against which a final agency determination has been entered pursuant to paragraph (c) of this section shall, however, at any time have the privilege of reopening a case for the limited purpose of contesting the issue of service. Such party's contentions on that issue shall be addressed to the Judicial Officer in the same manner as a request for a hearing (see § 957.5). The Judicial Officer may require such additional showings or proof as the Judicial Officer may deem necessary on the issue of service and shall reopen any debarment proceeding previously closed pursuant to paragraph (c) of this section if the Judicial Officer shall find that service was incomplete or otherwise failed to adequately advise of the pendency of the proposed debarment.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.5 The request for a hearing.

A respondent may, within 20 days following the receipt of a written notice of proposed debarment, file a request for a hearing before the Judicial Officer. The request shall be addressed to the presiding officer through the Vice President who initiated the debarment proceeding and shall be accompanied by a concise statement admitting, denying or explaining each of the allegations set forth in the notice of proposed debarment and stating the relief desired.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.6 Order relative to hearing.

(a) The Judicial Officer shall issue an order granting the Respondent's request for a hearing, establishing the time and place thereof and advising the Respondent of the consequences of a failure to appear at the hearing (see § 957.9). Whenever practicable, the hearing date shall be within 30 days of the date of the Judicial Officer's order relative to hearing.

(b) The notice of proposed debarment and the request for a hearing together with the reply, if any, shall become the pleadings in any proceeding in which the Judicial Officer orders a hearing to be held.

§ 957.7 Reply.

Not more than 15 days from the service of the request for a hearing, the General Counsel may submit a reply on behalf of the Vice President who initiated the debarment proceeding.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.8 Service and filing documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, orders and other documents for the record. The Recorder shall cause copies to be served promptly on other parties to the proceeding and on the Judicial Officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the Judicial Officer. One copy shall be signed as the original.

(c) Documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by order of the Judicial Officer to be filed by a specified date shall be served upon the Recorder on or before such date. The date of such service shall be the filing date and shall be entered thereon by the Recorder.

(d) Service of all papers shall be effected by mailing the same, postage prepaid registered, or certified mail, return receipt requested, or by causing said notice to be personally served on the proposed Respondent by an authorized representative of the Vice President. In the case of personal service the person making service shall secure from the proposed Respondent or his or her agent, a written acknowledgment of receipt of said notice, showing the date and time of such receipt. Said acknowledgment (or the return receipt where service is effectuated by mail) shall be made a part of the record by the Vice President initiating the debarment proceeding. The date of delivery, as shown by the acknowledgment of personal service or the return receipt, shall be the date of service.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.9 Respondent's failure to appear at the hearing.

If the Respondent shall fail to appear at the hearing, the Judicial Officer shall receive the Vice President's evidence and render a Postal Service Decision without requirement of further notice to the Respondent.

[36 FR 11574, June 16, 1971, as amended at 37 FR 23422, Nov. 3, 1972; 63 FR 66051, Dec. 1, 1998]

§ 957.10 Respondent already debarred by another Government agency.

(a) When a Vice President proposes to debar a firm or individual already debarred by another Government agency for a term concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of facts obtained from such other agency or upon such facts and additional other facts. In such cases the facts obtained from the other agency shall be considered as established, but the party to be debarred shall have opportunity to present information to the Judicial Officer and to explain why the debarment by the Postal Service should not be imposed.

(b) Where the Vice President initiating the debarment proceeding relies:

(1) Upon the provisions of paragraph (a) of this section, or

(2) Upon all or part of the record of the proposed Respondent's previous debarment by another Government agency, in initiating such proceeding, the notice of proposed debarment shall contain a statement so stating in sufficient detail to apprise the Respondent of the extent of such reliance.

(c) The Vice President's reliance upon provisions of paragraph (a) of this section, stated in conformity with the directions set forth in paragraph (b) of this section does not deprive the Respondent of the right to request the Judicial Officer to grant a hearing pursuant to these rules, nor the Judicial Officer the full discretion to grant or deny such request.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.11 Amendment of pleadings.

(a) 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: *Provided*, That the proposed amendment is reasonably within the scope of the proceeding.

(b) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the notice of proposed debarment 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.

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

framed by the pleadings, but fails to satisfy the Judicial Officer that an amendment of the pleadings would prejudice him on the merits, the Judicial Officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(d) The Judicial Officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 957.12 Continuances and extensions.

Continuances and extensions will not be granted by the Judicial Officer except for good cause shown.

§ 957.13 Hearings.

(a) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the Judicial Officer.

(b) A party may, not later than 7 days prior to the scheduled date of a hearing, file a request that such hearing be held at a place other than that designated in the Judicial Officer's order relative to hearing. The party shall support his or her request with a statement outlining:

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

(2) The names and addresses of the witnesses who will testify;

(3) The reasons why such evidence cannot be produced at Arlington, VA. The Judicial Officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.14 Appearances.

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

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see part 951 of this chapter).

(c) When a Respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed debarment shall be mailed to the attorney.

(d) All counsel shall promptly file notices of appearance. Changes of Respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the Respondent.

(e) After a request for a hearing has been filed pursuant to the rules in this part, the Law Department shall represent the Vice President in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such office who has been assigned to handle the case on its behalf.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.15 Conduct of the hearing.

The Judicial Officer shall have authority to:

(a) Administer oaths and affirmations;

(b) Examine witnesses;

(c) Rule upon offers of proof, admissibility of evidence, and matters of procedure;

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

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

(f) Require the filing of briefs or memoranda of law on any matter upon which the Judicial Officer is required to rule;

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

(h) Order the proceeding reopened at any time prior to his or her decision for the receipt of additional evidence;

(i) Render a final agency decision;

(j) Take such other further action as may be necessary to properly preside over the debarment proceeding and render decision therein.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.16 Evidence.

(a) Except as otherwise provided in the rules in this part, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall

govern. However, such rules may be relaxed to the extent that the Judicial Officer deems proper to insure a fair hearing.

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

(c) Agreed statements of fact may be received in 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 in 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 or her opinion or knowledge concerning the matters in question.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.17 Witness fees.

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

§ 957.18 Depositions.

(a) Not later than 7 days prior to the scheduled date of the hearing any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the 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 for the taking of the deposition will 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 witness testifying upon deposition shall 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. The deposition officer shall put the witness on oath. 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 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 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 in 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 in evidence, it shall not be considered as a part of the record in the proceeding. 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 of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular 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 a deposition.

(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 officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.19 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the Judicial Officer. Argument upon any matter may be excluded from the transcript by order of the Judicial 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 may be obtained by the Respondent from the reporter upon the payment of a reasonable price therefor. Copies of parts of the official record other than the transcript may be obtained from the librarian of the Postal Service or the Recorder.

(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, the party may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the Judicial Officer, notify the Judicial Officer in writing of his or her concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the Judicial Officer shall by order specify the corrections to be made in the transcript. The Judicial Officer on his or her 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 Judicial Officer other than the agreement of the parties shall be subject to objection and exception.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.20 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to appear at the hearing may, unless at the discretion of the Judicial Officer such is not appropriate, submit proposed findings of fact, conclusions of law and supporting reasons either in oral or written form in the discretion of the Judicial Officer. The Judicial Officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless given orally the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.21 Decision.

The Judicial Officer shall issue a final agency decision. Such decision shall include findings and conclusions, with the reasons therefor, upon all the material issues of fact or law presented on the record, and the appropriate order.

§ 957.22 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final agency decision. 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.

§ 957.23 Modification or revocation of orders.

A party against whom an order of debarment has been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.24 Computation of time.

A designated period of time under the rules in this part 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.

§ 957.25 Official record.

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

§ 957.26 Public information.

The Librarian of the Postal Service shall maintain for public inspection in the Library copies of all final decisions. The Recorder maintains the complete official record of every proceeding.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.27 Suspension.

(a) Any firm or individual suspended under chapter 3, section 7 of the Postal Service Purchasing Manual who believes that the suspension has not been in accordance with the provisions thereof, or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

(b) Any such appeal shall be addressed to the Judicial Officer through the Vice President who ordered the suspension within 20 days of the date upon which the respondent has been notified of the suspension. Such appeal shall concisely and in the manner of a pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.

(c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with the appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.

(d) The decision of the Judicial Officer in any appeal shall constitute the final agency determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of § 957.22.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§ 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 958 [RESERVED]

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

Sec.

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AUTHORITY: 39 U.S.C. 204, 401; 39 CFR 224.1(c)(6)(ii)(D).

SOURCE: 39 FR 33213, Sept. 16, 1974, unless otherwise noted.

§ 959.1 Authority for rules.

These rules are issued by the Judicial Officer of the U.S. Postal Service pursuant 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 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078 and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

[63 FR 66052, Dec. 1, 1998]

§ 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 Recorder, 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 authorized in this part) shall become the pleadings in appeals from demands.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.6 Revocations of suspension.

(a) The General Counsel, or a member of the General Counsel's staff as may be designated, may initiate a revocation of the suspension of the Private Express Statutes as provided in part 320 of this title as to any person, by filing, in triplicate, a petition with the Recorder 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 Recorder within 15 days after being 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 respondent's 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.7 Notice of hearing.

When a petition is filed, the Recorder 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.8 Service of petition filed under § 959.6.

(a) The Recorder 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 respondent's agent by said postmaster or the postmaster's designee. A receipt acknowledging delivery of the notice shall be secured from the respondent or respondent's agent and forwarded to the Recorder, to become a part of the official record.

(b) If, after 5 days, the postmaster or the postmaster's designee, can find no person to 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 Recorder and such statement shall constitute evidence of service.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.9 Filing documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, orders and other documents for the record. The Recorder 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 Recorder on or before such date. The date of filing shall be entered thereon by the Recorder.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.10 Default.

(a) If the respondent fails to file an answer within the time specified in the notice of hearing, the respondent 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.11 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Recorder. 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 or she 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 satisfy the presiding officer that an amendment of the pleadings would prejudice the objecting party on the merits, the presiding officer may allow the amendment and may grant a continuance to enable the objecting party to rebut the evidence presented.

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

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.12 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause found.

§ 959.13 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66052, Dec. 1, 1998]

§ 959.14 Change of place of hearings.

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

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

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

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

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.15 Appearances.

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

(b) An attorney may practice before 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 Judge 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 proceedings 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;

(4) Order any pleading amended upon motion of a party at any time prior to the 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 or memoranda of law on any matter upon which he or she 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 or her 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 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 presiding 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 or her 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 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. This does not affect the authority of the Chief Postal Inspector to issue subpoenas for the production of documents or information pursuant to § 233.1(c) of this chapter.

[39 FR 33213, Sept. 16, 1974, as amended at 56 FR 55825, Oct. 30, 1991]

§ 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 Recorder for the taking of testimony by deposition. In support of such application, the applicant shall submit under oath or affirmation, a statement containing the 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.

(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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 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 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 or her 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 or her 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 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 or she 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 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 Recorder, 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.23 Decisions.

(a) *Oral decisions*. The presiding officer may, in his or her 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 final decision by the Judicial Officer*. When the Judicial Officer presides at the hearing, he or she 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 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 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 Recorder 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 Recorder, 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 Recorder 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.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 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 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 Recorder an application for modification or revocation, addressed to the Judicial Officer. The Recorder 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 Recorder. Thereafter an order granting or denying such application in whole or in part will be issued by the Judicial Officer.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

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

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.31 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 960—RULES RELATIVE TO IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN POSTAL SERVICE PROCEEDINGS

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AUTHORITY: 5 U.S.C. 504 (c)(1); 39 U.S.C. 204, 401 (2).

SOURCE: 46 FR 45945, Sept. 16, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 960.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called ''the Act'' in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Postal Service. An eligible party may receive an award when it prevails over the Postal Service, unless the Postal Service's position was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Postal Service will use to make them.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6797, Mar. 5, 1987]

§ 960.2 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Postal Service on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the Postal Service within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

[52 FR 6797, Mar. 5, 1987]

§ 960.3 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Postal Service. These are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the Postal Service is presented by an attorney or other representative who enters an appearance and participates in the proceeding (for the Postal Service, the types of proceedings generally covered are proceedings relative to false representation and cease and desist orders and mailability under chapter 30 of title 39, U.S.C., with the exception of proceedings under 39 U.S.C. 3008); and

(2) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Postal Service Board of Contract Appeals as provided in section 8 of that Act. (41 U.S.C. 607).

(b) The Postal Service may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987; 67 FR 62179, Oct. 4, 2002]

§ 960.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term ''party'' is defined in 5 U.S.C. 551(3). The applicant must show by clear and convincing evidence that it meets all conditions of eligibility set out in this subpart and in subpart B and must submit additional information to verify its eligibility upon order by the adjudicative officer.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnerships, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated, which in proceedings before the Board of Contract Appeals is the date the applicant files its appeal to the Board.

(d) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant

prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, including expenses and fees incurred in filing for an award under the Act, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on Postal Service counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.6 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant. Attorney fees may not be recovered by parties appearing *pro se* in postal proceedings.

(b) No award for the fee of an attorney or agent under these rules may exceed $125.00 per hour, or such rate as prescribed by 5 U.S.C. 504. No award to compensate an expert witness may exceed the highest rate at which the Postal Service pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate

for similar services, and the study or other matter was necessary for preparation of the applicant's case.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987; 66 FR 55577, Nov. 2, 2001]

§ 960.7 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Postal Service may adopt regulations providing that attorney fees may be awarded at a rate higher than $125.00 per hour, or such rate as prescribed by 5 U.S.C. 504, in some or all of the types of proceedings covered by this part. The Postal Service will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may request the Postal Service to initiate a rulemaking proceeding to increase the maximum rate for attorney fees. The request should identify the rate the person believes the Postal Service should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Postal Service will respond to the request within 60 days after it is filed, by determining to initiate a rulemaking proceeding, denying the request, or taking other appropriate action.

[46 FR 45945, Sept. 16, 1981, as amended at 66 FR 55577, Nov. 2, 2001]

§ 960.8 Official authorized to take final action under the Act.

The Postal Service official who renders the final agency decision in a proceeding under § 952.26 or § 953.15, or the panel that renders the decision in an appeal before the Board of Contract Appeals under part 955 procedures, as the case may be, is authorized to take final action on matters pertaining to the Equal Access to Justice Act as applied to the proceeding.

[52 FR 6798, Mar. 5, 1987]

Subpart B—Information Required From Applicants

§ 960.9 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Postal Service in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates.) However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states on the application that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Postal Service to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.10 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 960.4(f)) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information'', accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Postal Service's established procedures under the Freedom of Information Act, part 265 of this title.

§ 960.11 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed. In addition, the Board of Contract Appeals may require an applicant to submit to an audit by the Postal Service of its claimed fees and expenses.

(b) Where the case has been sustained in part and denied in part or where the applicant has prevailed in only a significant and discrete substantive portion of the case, the application must be limited to fees and expenses allocable to the portion of the case as to which the applicant was the prevailing party.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.12 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Postal Service's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or

other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Postal Service's final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed;

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration;

(5) In proceedings under 39 U.S.C. 3005, on the date that an Administrative Law Judge enters an order indefinitely suspending further proceedings on the basis of a compromise agreement entered into between the parties; or

(6) In proceedings before the Board of Contract Appeals, the Board of Contract Appeals decision on quantum. When the Board decides only entitlement and remands the issue of quantum to the parties, the final disposition occurs when the parties execute an agreement on quantum, or if the parties cannot agree on quantum and resubmit the quantum dispute to the Board, when the Board issues a decision on quantum.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

Subpart C—Procedures for Considering Applications

§ 960.13 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 960.11(b) for confidential financial information.

§ 960.14 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Postal Service may file an answer to the application. Unless the Postal Service counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the Postal Service counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by Postal Service counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Postal Service's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Postal Service shall include with the answer either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.15 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.16 Comments by other parties.

Any party to a proceeding other than the applicant and Postal Service may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 960.17 Settlement.

The applicant and the Postal Service may agree on a proposed settlement of the award before final action on the application, either in connection with a

settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Postal Service counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 960.18 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Postal Service counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the entire administrative record that is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.19 Decision.

(a) The adjudicative officer shall issue an initial decision on the application as promptly as possible after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Postal Service's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against the Postal Service and another agency, the decision shall allocate responsibility for payment of any award made between the Postal Service and the other agency, and shall explain the reasons for the allocation made.

(b) The Board of Contract Appeals shall issue its decision on the application as promptly as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same Administrative Judge or panel that decided the contract appeal for which fees are sought. The decision shall be in the format described in paragraph (a) of this section.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.20 Further Postal Service review.

(a) Either the applicant or Postal Service counsel may seek review of the initial decision on the fee application, in accordance with § 952.25 or § 953.14. If neither the applicant nor the Postal Service counsel seeks review, the initial decision on the application shall become a final decision of the Postal Service 30 days after it is issued. If review is taken, the Judicial Officer will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(b) In Board of Contract Appeals proceedings, either party may seek reconsideration of the decision on the fee application in accordance with 39 CFR 955.30.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.21 Judicial review.

A party other than the Postal Service may, within 30 days after a determination on the award is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication in accordance with 5 U.S.C. 504(c)(2).

[52 FR 6799, Mar. 5, 1987]

§ 960.22 Payment of award.

An applicant seeking payment of an award shall submit to the Judicial Officer a copy of the Postal Service's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Requests for payment should be sent to: Judicial Officer, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The Judicial Officer shall submit certification for payment to the Postal Data Center. The Postal Service will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[46 FR 45945, Sept. 16, 1981, as amended at 63 FR 66052, Dec. 1, 1998]

PART 961—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO EMPLOYEE HEARING PETITIONS UNDER SECTION 5 OF THE DEBT COLLECTION ACT

Sec.

961.1 Authority for rules.
961.2 Scope of rules.
961.3 Definitions.
961.4 Employee petition for a hearing and supplement to petition.
961.5 Effect of Petition filing.
961.6 Filing, docketing and serving documents; computation of time; representation of parties.
961.7 Answer to Petition and Supplement to Petition.
961.8 Hearing Official authority and responsibilities.
961.9 Effect of Hearing Official's decision; motion for reconsideration.
961.10 Waiver of employee rights.
961.11 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401; 5 U.S.C. 5514(a).

SOURCE: 51 FR 1251, Jan. 10, 1986, unless otherwise noted.

§ 961.1 Authority for rules.

These rules are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 961.2 Scope of rules.

The rules in this part apply to the hearing provided by section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a), on the Postal Service's determination of the existence or amount of an employee debt to the Postal Service, or of the terms of the employee's debt repayment schedule. In addition, these rules, as appropriate, apply to a hearing under section 5 of the Debt Collection Act when an Administrative Law Judge or an Administrative Judge in the Judicial Officer Department is designated as the Hearing Official for a creditor Federal agency other than the Postal Service pursuant to an agreement between the Postal Service and that agency.

§ 961.3 Definitions.

(a) *Employee* refers to a current employee of the Postal Service or another Federal agency who is alleged to be indebted to the Postal Service or another creditor Federal agency and whose hearing under section 5 of the Debt Collection Act is being conducted under these rules.

(b) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(c) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person not under the control or supervision of the Postmaster General, who is designated by the Judicial Officer to conduct the hearing under section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a).

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service.

(e) *Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act* refers to the formal written notice required by section 5 of the Debt Collection Act before involuntary collection deductions can be taken from an employee's salary.

(f) *Postmaster/Installation Head* refers to the Postal Service official who is authorized under the Postal Service Employee and Labor Relations Manual to

make the initial determination of employee indebtedness and to issue the ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.''

(g) Recorder refers to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[51 FR 1251, Jan. 10, 1986, as amended at 63 FR 66053, Dec. 1, 1998]

§961.4 Employee petition for a hearing and supplement to petition.

(a) If an employee desires a hearing, prescribed by section 5 of the Debt Collection Act, on the Postal Service's determination of the existence or amount of a debt, or on the involuntary repayment terms proposed by the Postal Service, the employee must file a written, signed petition with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, on or before the fifteenth (15th) calendar day following the employee's receipt of the Postal Service's ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.''

(b) The hearing petition is to include the following:

(1) The words, ''Petition for Hearing Under the Debt Collection Act,'' prominently captioned at the top of the first page:

(2) The name of the employee petitioner and the employee's work and home addresses, and work and home telephone numbers; or other address and telephone number where the employee may be contacted about the hearing proceedings;

(3) A statement of the date the employee received the ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act,'' *and* a copy of the Notice;

(4) A statement indicating whether the employee requests an oral hearing or a hearing based solely on written submissions;

(5) If the employee requests an oral hearing, a statement of the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the employee expects to call; the proposed city for the hearing site, with justification for holding the hearing in that city; and recommended alternative dates for the hearing; which should be within 40 days from filing the Petition;

(6) A statement of the grounds upon which the employee objects to the Postal Service's determination of the existence or amount of the debt, or to the proposed offset schedule. This statement should identify and explain with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which the employee believes support his or her position;

(7) Copies of all records in the employee's possession which relate to the debt; and

(8) If an employee contends that the Postal Service's proposed offset schedule would result in a severe financial hardship on the employee and his or her spouse and dependents, an alternative offset schedule, and a statement and supporting documents indicating for the employee and his or her spouse and dependents for the one year preceding the Postal Service's notice and for the repayment period proposed by the employee in his or her alternative offset schedule, their total income from all sources; assets; liabilities; number of dependents; and expenses for food, housing, clothing, transportation, medical care, and exceptional expenses, if any.

(c) The employee may, if necessary, file with the Recorder, additional information as a Supplement to the Petition on or before the thirtieth (30th) calendar day following the employee's receipt of the Postal Service's ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.''

[51 FR 1251, Jan. 10, 1986, as amended at 63 FR 66053, Dec. 1, 1998]

§961.5 Effect of Petition filing.

Upon receipt and docketing of the employee's Petition for a hearing, the Recorder will notify the Postmaster/Installation Head and the General Counsel that the Petition has been filed and that pursuant to section 5 of the Debt Collection Act, a timely-filed Petition for a hearing stays further collection action.

§ 961.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing*. All documents relating to the Debt Collection Act hearing proceedings must be filed by the employee or the General Counsel with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or day-light saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing*. The Recorder will maintain a docket record of Debt Collection Act hearing petition proceedings and will assign each employee Petition a docket number. After notification of the docket number, the employee and General Counsel should refer to it on any further filings regarding the Petition.

(c) *Time computation*. A filing period under the rules in this part 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.

(d) *Representation of parties*. After the filing of the Petition, further document transmittals for, or communications with, the Postmaster/Installation Head or Postal Service shall be through their representative, the General Counsel, or, if an appropriate notice of appearance is filed, the General Counsel's designee. If a notice of appearance by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States is filed in behalf of an employee, further transmissions of documents and other communications with the employee shall be made through his or her attorney rather than directly with the employee.

§ 961.7 Answer to Petition and Supplement to Petition.

If the employee's Petition states reasons to support the employee's position, within 15 days from notice of the Petition, the General Counsel shall file an Answer to the Petition, and attach all available relevant records and documents in support of the Postal Service's claim, and a list of witnesses the Postal Service intends to call if an oral hearing is granted. If the employee files a Supplement to the Petition, the General Counsel, within ten (10) calendar days from the filing of the Supplement with the Recorder must file any Supplemental Answer and records to support the position of the Postal Service.

§ 961.8 Hearing Official authority and responsibilities.

The Hearing Official shall provide a full and fair hearing. The proceedings must be expedited to ensure issuance of the final decision no later than 60 days after the filing of the employee's hearing Petition. The Hearing Official's authority includes, but is not limited to, the following:

(a) Ruling on all offers, motions or requests by the parties;

(b) Issuing any notices, orders or memoranda to the parties concerning the hearing proceedings;

(c) Using telephone conferences with the parties to expedite the proceedings. A memorandum of a telephone conference will be transmitted to both parties;

(d) Determining if an oral hearing should be held; and setting the place, date and time for the hearing or the taking of testimony by telephone conference;

(e) Administering oaths or affirmations to witnesses, and conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(f) Establishing the record in the case;

(g) Issuing the final decision orally or in writing no later than sixty (60) days after the filing of the employee's hearing Petition. When an oral decision is rendered, a written confirmation will thereafter be sent to the parties. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. It should also include findings and reasons.

§ 961.9 Effect of Hearing Official's decision; motion for reconsideration.

The Hearing Official's decision shall be the final administrative determination on the employee's debt or repayment schedule. No reconsideration of the decision will be allowed unless a motion for reconsideration is filed by either party within 10 days from receipt of the decision and shows good reasons for reconsideration. Reconsideration will be allowed only in the discretion of the Hearing Official. A motion for reconsideration by the employee will not operate to stay the collection action authorized by the Hearing Official's decision.

§ 961.10 Waiver of employee rights.

The Hearing Official may determine the employee has waived his or her right to a hearing and the employee's pay shall be offset in accordance with the Postal Service's offset schedule, if the employee:

(a) Files a Petition for hearing after the end of the 15-day period allowed by the Act for filing the Petition, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official, and the failure makes it difficult or impossible to hold the hearing or to issue the decision within the statutory time;

(d) Files a withdrawal of his or her Petition for a hearing with the Recorder.

§ 961.11 Ex parte communications.

Ex parte communications between a Hearing Official or his staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

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AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

SOURCE: 52 FR 12904, Apr. 20, 1987, unless otherwise noted.

§ 962.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812).

§ 962.2 Definitions.

(a) *Attorney* refers to an individual authorized to practice law in any of the United States or the District of Columbia or a territory of the United States.

(b) *Complaint* refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8 of this title.

(c) *Initial Decision* refers to the written decision which the Presiding Officer is required by § 962.20 to render, and includes a revised initial decision issued following a remand.

(d) *Investigating Official* refers to the Inspector General of the United States Postal Service or any designee within the Office of the Inspector General.

(e) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 any designee within the Judicial Officer Department.

(f) *Party* refers to the Postal Service or the Respondent.

(g) *Person* refers to any individual, partnership, corporation, association, or private organization.

(h) *Postmaster General* refers to the Postmaster General of the United States or his designee.

(i) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(j) Recorder refers to the Recorder of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(k) *Representative* refers to an attorney or other advocate.

(l) *Respondent* refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C. 3802.

(m) *Reviewing Official* refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate payable under section 5376 of title 5 of the United States Code.

[52 FR 12904, Apr. 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§ 962.3 Petition for hearing.

Within 30 days of receiving the Postal Service's Complaint, issued pursuant to § 273.8 of this title, alleging liability under 31 U.S.C. 3802, the Respondent may request a hearing under the Program Fraud Civil Remedies Act by filing a written Hearing Petition with the Recorder in accordance with § 962.22(b). The Respondent's Petition must include the following:

(a) The words ''Petition for Hearing Under the Program Fraud Civil Remedies Act,'' or other words reasonably identifying it as such;

(b) The name of the Respondent as well as his or her work and home addresses, and work and home telephone numbers; or other address and telephone number where the Respondent may be contacted about the hearing proceedings;

(c) A statement of the date the Respondent received the Complaint issued by the Reviewing Official;

(d) A statement indicating whether the Respondent requests an oral hearing or a decision on the record;

(e) If the Respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the Respondent intends to rely.

§ 962.4 Referral of complaint.

(a) If the Respondent fails to request a hearing within the specified period, the Reviewing Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an initial decision based upon the information contained in the Complaint.

(b) If the Respondent files a Hearing Petition, the Reviewing Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§ 962.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record (1) to determine whether the Respondent is liable under 31 U.S.C. 3802, and (2) if so, to determine the amount of any civil penalty or assessment to be imposed.

(b) The Postal Service must prove its case against a Respondent by a preponderance of the evidence.

(c) The parties may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 962.6 Notice of hearing.

(a) Within a reasonable time after receiving the Respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve, in accordance with § 962.23, upon the Respondent and the Reviewing Official, a Notice of Hearing containing the information set forth in paragraph (b) of this section.

(b) The Notice of Hearing required by paragraph (a) of this section must include:

(1) The tentative hearing site, date, and time;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

§ 962.7 Hearing location.

An oral hearing under this part shall be held

(a) In the judicial district of the United States in which the Respondent resides or transacts business; or

(b) In the judicial district of the United States in which the claim or statement upon which the allegation of liability under 31 U.S.C. 3802 was made, presented, or submitted; or

(c) In such other place as may be agreed upon by the Respondent and the Presiding Officer.

§ 962.8 Rights of parties.

Any party to a hearing under this part shall have the right

(a) To be accompanied, represented, and advised, by a representative of his own choosing;

(b) To participate in any prehearing or post-hearing conference held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the hearing;

(e) To present oral and documentary evidence relevant to the issues at the hearing;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 962.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the hearing, as well as, in accordance with § 962.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Issuing subpoenas, requiring the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and

documentary evidence which the Presiding Officer considers relevant and material to the hearing;

(6) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(7) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(8) Regulating the scope and timing of discovery;

(9) Regulating the course of the hearing and the conduct of the parties and their representatives;

(10) Examining witnesses;

(11) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(12) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(13) Establishing the record in the case; and

(14) Issuing a written initial decision containing findings of fact, conclusions of law, and determinations with respect to whether a penalty or assessment should be imposed, and if so, the amount of such penalty or assessment.

§ 962.10 Prehearing conferences.

(a) At a reasonable time in advance of the hearing, and with adequate notice to all parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled hearing date, time or site; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

§ 962.11 Respondent access to information.

(a)(1) Except as provided in paragraph (a)(2) of this section, the Respondent, at any time after receiving the Notice of Hearing required by § 962.6, may review, and upon payment of a duplication fee established under § 265.8(c) of this title, may obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to the allegations of liability, and upon which the findings and conclusions of the Investigating Official under § 273.5 of this title are based.

(2) The Respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law.

(b) At any time after receiving the Notice of Hearing required by § 962.6, the Respondent shall be entitled to obtain all exculpatory information in the possession of the Investigating Official or the Reviewing Official relating to the allegations or liability under 31 U.S.C. 3802. Paragraph (a)(2) of this section does not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(c) Requests to review or copy material under this section must be directed to the Reviewing Official who must respond within a reasonable time.

§ 962.12 Depositions; interrogatories; admission of facts; production and inspection of documents.

(a) *General Policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue

any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a Notice of Hearing described in § 962.6, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on the record, the Presiding Officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* Under no circumstances may a discovery procedure be used to reach

(1) Documents, transcripts, records, or other material which a person is not entitled to review pursuant to § 962.11;

(2) The notice sent to the Attorney General from the Reviewing Official under § 273.6 of this title; or

(3) Other documents which are privileged under Federal law.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.13 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Presiding Officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Presiding Officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to paragraphs (a)(1) and (a)(2)

of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or other tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or other tangible things sought.

(3) The Presiding Officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Presiding Officer may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Presiding Officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 31 U.S.C. 3804(b) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Presiding Officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.14 Enforcement of subpoenas.

In the case of contumacy or refusal to obey a subpoena issued pursuant to §§ 962.9(b)(5) and 962.13, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

§ 962.15 Sanctions.

(a) The Presiding Officer may sanction a person, including any party or representative, for

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) Failure to make timely filing. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 962.16 Disqualification of reviewing official or presiding official.

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.17 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 962.18 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.19 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.20 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of

his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 962.21, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision, such decision, including the findings and determinations, is final.

§ 962.21 Appeal of initial decision to judicial officer.

(a) *Notice of appeal and supporting brief.* (1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's specified exceptions to the Presiding Officer's initial decision.

(b) *Form of review.* (1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of judicial officer.* (1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.

(2) The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties 60 days after it is issued unless a petition for judicial review is filed.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.22 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must

(1) Contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), and a designation of the document (e.g., ''Motion to Quash Subpoena'');

(2) Contain the name, address, and telephone number of the party or other person on whose behalf the paper was filed, or the name, address and telephone number of the representative who prepared such paper; and

(3) Be signed by the party or other person submitting the document, or by such party's or person's representative.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (b) of this section, shall be made through the Reviewing Official or designated Postal

Service attorney. If a notice of appearance by a representative is filed on behalf of a Respondent, pleadings or document transmittals to, or communications with, the Respondent shall be made through his representative.

[52 FR 12904, Apr. 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 962.23 Service of notice of hearing, other documents.

Unless otherwise specified, service of a Notice of Hearing or any other document under this part must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 962.24 Computation of time.

(a) In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the applicable period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

§ 962.25 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 962.26 Settlement.

(a) Either party may make offers of settlement or proposals of adjustment at any time.

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations or determinations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer, except during the pendency of an appeal to the appropriate United States district court pursuant to 31 U.S.C. 3805 or during the pendency of an action to collect any penalties or assessments pursuant to 31 U.S.C. 3806.

(c) The Attorney General has the exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition for judicial review, or a pending action to recover such penalty or assessment.

(d) The Reviewing Official may recommend settlement terms to the Attorney General, as appropriate.

[59 FR 51860, Oct. 13, 1994]

§ 962.27 Limitations.

A hearing under this part concerning a claim or statement allegedly made, presented, or submitted in violation of 31 U.S.C. 3802 shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

PART 963—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO VIOLATIONS OF THE PANDERING ADVERTISEMENTS STATUTE, 39 U.S.C. 3008

Sec.

963.1 Authority for the rules.
963.2 Scope of the rules.
963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.
963.4 Presiding Officer.
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AUTHORITY: 39 U.S.C. 204, 401, 3008.

SOURCE: 52 FR 18912, May 20, 1987, unless otherwise noted.

§ 963.1 Authority for the rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 226.2(e)(1)).

[52 FR 18912, May 20, 1987, as amended at 59 FR 10751, Mar. 8, 1994]

§ 963.2 Scope of the rules.

These rules of practice are applicable to cases in which the Prohibitory Order Processing Center Manager (hereinafter, ''Manager'') has issued a complaint, pursuant to 39 U.S.C. 3008(d), alleging violation of a prohibitory order, and in which the alleged violator has petitioned for a hearing in the matter. As provided in 39 U.S.C. 3008(h), subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, U.S.C., do not apply to the hearings authorized by 39 U.S.C. 3008(d).

[52 FR 18912, May 20, 1987, as amended at 59 FR 10751, Mar. 8, 1994, 62 FR 4459, Jan. 30, 1997]

§ 963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.

(a) *Petition*. Anyone against whom a complaint has been issued pursuant to 39 U.S.C 3008(d) may submit to the Manager a petition for hearing on the alleged violation. The petition must be in writing, signed by the petitioner or his or her attorney, and filed with the Manager on or before the 15th day after receipt of the complaint. The petition shall state the reasons why the petitioner believes the complaint to be erroneous. No petition received after the 15th day will be considered to have been filed on time, unless it was duly sent to the Manager via certified mail, deposited in the U.S. mail on or before the 15th day. The Manager will forward each timely petition to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(b) *Notice of hearing*. Upon receiving a petition, the Recorder shall schedule a hearing for a date not later than 30 days after the date of receipt, issue and send a notice of hearing to the parties, and send a copy of the petition to the General Counsel of the U.S. Postal Service.

(c) *Answer*. The General Counsel shall file with the Recorder an answer to the petition within 15 days after the date of receiving a copy thereof. A certified copy of the material documents from the Manager's case file (i.e., of the PS Forms 1500, *Application for Listing and/or Prohibitory Order*, 2152, *Prohibitory Order*, and 2153, *Complaint*, underlying mail pieces, and pertinent return receipts) shall be appended to the answer.

(d) *Filing and copies of documents*. With the exception of the initial petition, all documents shall be filed with the Recorder in triplicate at the address set forth above. The Recorder shall promptly provide copies to the other party to the proceeding and to the presiding officer.

(e) *Summary Judgment*. Upon motion of either the General Counsel or the petitioner, or on his or her own initiative, the presiding officer may find that the petition and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or dismissing the complaint. The initial decision shall become the final agency decision if a timely appeal is not taken.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987, as amended at 59 FR 10752, Mar. 8, 1994; 62 FR 4459, Jan. 30, 1997; 63 FR 66053, Dec. 1, 1998]

§ 963.4 Presiding Officer.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his or her own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary properly to preside over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

§ 963.5 Appearances.

(a) *Petitioner*. A petitioner may appear and be heard in person or by attorney. An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see Part 951 of this chapter). When a petitioner is represented by an attorney, all pleadings and other papers to be served on petitioner after entry of the attorney's appearance shall be mailed to the attorney. A petitioner must promptly file notice of any change of attorney.

(b) *Postal Service*. The Postal Service will be represented by its General Counsel or any attorney designated by the General Counsel.

§ 963.6 Computation of time.

A designated period of time under these rules means calendar days, 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 case the period runs until the close of business on the next business day.

§ 963.7 Location of hearing.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66053, Dec. 1, 1998]

§ 963.8 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his or her behalf at a place other than that designated for hearing in the notice. The party shall support his or her request with a statement outlining:

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

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

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall consider the convenience and necessity of the parties and the relevance of the evidence to be offered.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997; 63 FR 66053, Dec. 1, 1998]

§ 963.9 Election as to hearing.

If both parties elect, an oral hearing may be waived and the matter submitted for decision on the basis of the petition and answer, and of any documentary evidence or briefs requested by the presiding officer. The written election to waive oral hearing must be received by the Recorder no later than 10 days prior to the scheduled hearing date.

§ 963.10 Continuances and extensions.

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

§ 963.11 Default.

If a petitioner, without notice or cause satisfactory to the presiding officer, fails to appear at the hearing or comply with any of the provisions of these rules or an order issued by the presiding officer, the petitioner may be deemed to have abandoned his or her petition and to have acquiesced in the allegations of the complaint. The presiding officer thereupon may find the petitioner to be in default and refer the matter to the Judicial Officer for dismissal of the petition.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

§ 963.12 Settlement agreements.

These rules do not preclude the disposition of any matter by agreement between the parties at any stage of the proceeding.

§ 963.13 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a petitioner's witnesses or for depositions requested by a petitioner.

§ 963.14 Discovery.

Discovery is to be conducted on a voluntary basis to the extent possible. The presiding officer may, upon application of either party, order such discovery as he or she deems reasonable and necessary. Discovery may include one or more of the following: production of documents, requests for admissions, interrogatories, depositions, and witness lists. The presiding officer will establish the terms upon which requested discovery will be allowed.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

§ 963.15 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

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

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 963.16 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 963.17 Proposed findings of fact and conclusions of law.

(a) Each party who participates in the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law, orders, and supporting reasons, either in writing or orally at the discretion of the presiding officer. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders, and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders, and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be stated separately.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987]

§ 963.18 Initial decision.

Unless given orally at the conclusion of the hearing, the presiding officer shall render an initial decision as expeditiously as practicable following the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision becomes the final agency decision if a timely appeal is not taken.

§ 963.19 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after the receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues de novo.

§ 963.20 Final agency decision.

The Judicial Officer, or by delegation the Associate Judicial Officer, renders

the final agency decision which will be served upon the parties. If the decision is that the Postal Service's prohibitory order was violated, the Recorder shall provide a certified copy of the record to the General Counsel for use in seeking court enforcement of the order.

§ 963.21 Official record.

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

§ 963.22 Public information.

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

[52 FR 18912, May 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

Sec.

964.1 Authority for rules.
964.2 Scope of rules.
964.3 Customer petitions; notice of hearing; answer; summary judgment.
964.4 Hearings.
964.5 Election as to hearing.
964.6 Default.
964.7 Presiding officers.
964.8 Subpoenas and witness fees not authorized.
964.9 Discovery; interrogatories; admission of facts; production; and inspection of documents.
964.10 Evidence.
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964.16 Appeal.
964.17 Final agency decision.
964.18 Compromise and informal disposition.
964.19 Orders.
964.20 Modification or revocation of orders.
964.21 Official record.
964.22 Public information.
964.23 Ex Parte communications.

AUTHORITY: 39 U.S.C. 204, 401, 3003, 3004.

SOURCE: 52 FR 36763, Oct. 1, 1987, unless otherwise noted.

§ 964.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the United States Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4)).

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 964.2 Scope of rules.

The rules in this part provide for administrative review of cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3003(a), has withheld from delivery mail which he believes is involved in a scheme described in section 3003(a), and cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3004, determines that letters or parcels sent in the mail are addressed to places not the residence or regular business address of the person for whom they are intended to enable the person to escape identification.

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 964.3 Customer petitions; notice of hearing; answer; summary judgment.

(a) *Petition*. Any addressee who receives notice from the Chief Postal Inspector or his delegate that his mail has been withheld pursuant to 39 U.S.C. 3003(a) or 3004 may oppose such action by filing with the Judicial Officer a written Petition stating the reasons for his or her opposition. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The Petition must be postmarked within 14 days of the date upon which the Petitioner received the notice. The failure of an addressee who has received notice of withheld mail to file a Petition opposing such action with the Judicial Officer shall constitute a waiver of hearing and further procedural steps by the addressee. The Chief Postal Inspector or his or her designee of the Postal Service shall thereupon file the matter

with the Judicial Officer for issuance of a final order pursuant to § 964.19. Such referral shall contain a statement of the basis for the detention, evidence that the notice of the detention and the addressee's right to petition for review under this part were served on the addressee in person or by mailing a copy to the address to which the detained mail is directed, the date of such service, and a copy of the proposed order sought by the Chief Postal Inspector or his or her designee.

(b) *Notice of hearing*. On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 28 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the Chief Postal Inspector or his or her designee of the U.S. Postal Service.

(c) *Answer*. The Chief Postal Inspector or his or her designee of the Postal Service shall file an Answer to the Petition within 10 days of receipt of the Petition from the Recorder.

(d) *Summary judgment*. Upon motion of either the Chief Postal Inspector or his or her designee or the Petitioner, or upon his own initiative, the presiding officer may find that the Petition and Answer present no material issues of fact requiring an evidentiary hearing and thereupon may render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken pursuant to § 964.16 of this part.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988; 63 FR 66053, Dec. 1, 1998; 71 FR 53972, Sept. 13, 2006]

§ 964.4 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer. Not later than 10 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in 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 the witnesses who will testify; and

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered

[52 FR 36763, Oct. 1, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 964.5 Election as to hearing.

If both parties elect, they may waive an oral hearing and submit the matter for decision on the basis of the Petition and Answer, subject to the authority of the presiding officer to require the parties to furnish such further evidence or such briefs as necessary. The request to waive oral hearing should be filed not later than 10 days prior to the date set for hearing.

§ 964.6 Default.

If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may issue an order dismissing the Petition and refer the matter to the Judicial Officer for issuance of the order provided for under § 964.19. An order of dismissal issued under this section may be appealed to the Judicial Officer within 10 days from the date of the order.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.7 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Judicial Officer shall assign cases upon rotation as far as practicable. The Judicial Officer may on his own initiative or for good cause shown, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleadings amended upon motion of a party at any time prior to the 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 or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties or for any other purpose he believes will facilitate the processing of the proceeding;

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

(9) Render an initial decision, which becomes the final agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under §964.9 of this part.

§964.8 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a Petitioner's witnesses or for depositions requested by a Petitioner.

§964.9 Discovery; interrogatories; admission of facts; production and inspection of documents.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the presiding officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting confidential information or documents from unwarranted public disclosure. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a notice of hearing described in §964.3 of this part, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence, or both.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of the record.

(c) *Interrogatories to parties.* Not later than 5 days after the filing of the Answer described in §964.3, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 10 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* Not later than 5 days after the filing of the Answer described in §964.3, a party may serve upon the other party a request for the admission of specified facts. Within 10 days after receipt of the request for admissions, the party served shall admit or answer each specified fact or file objections thereto. Any factual propositions set out in the request to which a party fails to respond shall be deemed admitted.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or

photographing of any designated documents and or objects, provided that such documents and objects are not privileged, their relevance to the cause or causes in issue is explained, and they are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify the terms and conditions for making the inspection and taking the copies and photographs.

§ 964.10 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

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

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 964.11 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer orders otherwise. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 964.12 Computation of time.

A designated period of time under these rules means calendar days, 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 case the period runs until the close of business on the next business day.

§ 964.13 Continuances and extensions.

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

§ 964.14 Proposed findings of fact and conclusions of law.

(a) Each party to a proceeding, except one who fails to answer the Petition or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed finding. Each proposed conclusion shall be separately stated.

§ 964.15 Decisions.

(a) *Initial decision by Administrative Law Judge*. A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The initial decision shall become the final agency decision unless an appeal is taken in accordance with § 964.16.

(b) *Tentative or final 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 and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The tentative decision shall become the final agency decision unless exceptions are filed in accordance with § 964.16.

§ 964.16 Appeal.

(a) Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues *de novo*.

(b) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder 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 in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

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

§ 964.17 Final agency decision.

The Judicial Officer renders the final agency decision and order which will be served upon the parties and upon the postmaster at the office where the mail at issue is being held.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.18 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 964.19 Orders.

If an order is issued by the Judicial Officer which prohibits delivery of mail to a Petitioner it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.20 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the Chief Postal Inspector or his or her designee, who shall file a written reply within 10 days after receipt or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[52 FR 36763, Oct. 1, 1987, as amended at 71 FR 53972, Sept. 13, 2006]

§ 964.21 Official record.

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

§ 964.22 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders.

The Recorder maintains the complete official record of every proceeding.

[52 FR 36763, Oct. 1, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 964.23 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 965—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAIL DISPUTES

Sec.
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965.14 Public information.

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 52 FR 29012, Aug. 5, 1987, unless otherwise noted.

§ 965.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General. (39 CFR 224.1(c)(4)).

§ 965.2 Scope of rules.

The rules in this part shall be applicable to mail dispute cases forwarded to the Judicial Officer Department by the chief field counsel pursuant to Postal Operations Manual section 616.21.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 965.3 Notice to parties.

Upon receipt of a mail dispute case from the chief field counsel, the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington VA 22201–3078, will send a notice of docketing and submittal due date to the parties together with a copy of these rules.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§ 965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary to preside properly over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§ 965.5 Submittals by parties.

Within 15 days after receipt of the Recorder's notice, each party shall file with the Recorder a sworn statement of the facts supporting its claim to receipt of the mail together with a copy of each document on which it relies in making such claim. All such submittals shall be in duplicate. Upon receipt of such evidence, the Recorder shall send a copy of each submittal to the opposing party.

§ 965.6 Comments by parties.

Within 10 days of receipt of the other party's evidence, each party may file with the Recorder a statement setting forth in detail its disagreements, if any, with its opponent's statement and documents. The Recorder will send to each party a copy of the other party's comments.

§ 965.7 Default.

A party who fails to file the submittal required by § 965.5 may be held in default and the presiding officer may issue an initial decision that mail be delivered to the other party.

§ 965.8 Hearings.

(a) In the discretion of the presiding officer an oral hearing may be granted at the request of either, or both, parties or on the presiding officer's own initiative if there is a dispute as to a material issue of fact which can only be resolved by examination of witnesses.

(b) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or such other place as may be designated by the presiding officer.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 965.9 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

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

(c) Agreed statements to fact are encouraged and may be received in evidence.

§ 965.10 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

§ 965.11 Initial decision.

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10 working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

§ 965.12 Appeal.

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial or tentative decision becomes the final agency decision on the issuance of such denial. The judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

§ 965.13 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 965.14 Public Information.

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

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

Sec.

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AUTHORITY: 39 U.S.C. 204, 401, 2601.

SOURCE: 62 FR 63279, Nov. 28, 1997, unless otherwise noted.

§ 966.1 Authority for rules.

These rules of practice are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 966.2 Scope of rules.

The rules in this part apply to any petition filed by a former postal employee:

(a) To challenge the Postal Service's determination that he or she is liable to the Postal Service for a debt incurred in connection with his or her Postal Service employment; and/or

(b) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

§ 966.3 Definitions.

(a) *Administrative offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(b) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(c) *Former employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date of his or her separation. Postal Service Form 50.

(d) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(e) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to this part.

(f) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(g) *Postmaster/Installation Head* refers to the top management official at a particular post office or installation when an alleged debt owed by a former employee was incurred, or to that official's successor, or to the department head who had general supervisory responsibility for a former employee at Area Offices or National Headquarters when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was a Postmaster/Installation Head, the term refers to the official to whom the Postmaster/Installation Head reported when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Inspection Service, the term refers to the former employee's immediate supervisor when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Office of Inspector General, the term refers to the Inspector General, or to the Inspector General's delegate.

(h) *Reconsideration* refers to the review of an alleged debt and/or the proposed offset schedule conducted by the Postmaster/Installation Head at the request of a former employee alleged to be indebted to the Postal Service.

(i) *Recorder* refers to the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[62 FR 63279, Nov. 28, 1997, as amended at 63 FR 66053, Dec. 1, 1998]

§ 966.4 Petition for a hearing and supplement to petition.

(a) A former employee who is alleged to be responsible for a debt to the Postal Service may petition for a hearing under this part, provided:

(1) Liability for the debt and/or the proposed offset schedule has not been established under Part 452.3 or Part 462.3 of the Employee & Labor Relations Manual;

(2) He or she has received a Notice from the Minneapolis Accounting Service Center (or its successor installation) informing him or her of the debt

and an offset schedule to satisfy the debt and of the right to request reconsideration by the Postmaster/Installation Head; and

(3) He or she has requested and received reconsideration of the existence or amount of the alleged debt and/or the offset schedule proposed by the Postal Service.

(b) Within thirty (30) calendar days after the date of receipt of the Postmaster/Installation Head's written decision upon reconsideration, the former employee must file a written, signed petition, requesting a written or oral hearing, with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(c) The petition must include the following:

(1) The words, ''Petition for Review Under 39 CFR Part 966'';

(2) The former employee's name and social security number;

(3) The former employee's home address and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Postmaster/Installation Head's written decision upon reconsideration of the alleged debt, and a copy of the decision;

(5) A statement indicating whether the former employee requests an oral hearing or a decision based solely on written submissions;

(6) If the former employee requests an oral hearing, a statement describing the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the former employee expects to call; a summary of the testimony the witnesses are expected to present; the city requested for the hearing site, with justification for holding the hearing in that city; and at least three proposed dates for the hearing at least forty-five (45) days after the filing of the petition;

(7) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which support the former employee's position; and

(8) Copies of all records in the former employee's possession which relate to the debt and which the former employee may enter into the record of the hearing.

(d) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

[62 FR 63279, Nov. 28, 1997, as amended at 63 FR 66053, Dec. 1, 1998]

§ 966.5 Effect of petition filing.

Upon receipt and docketing of the former employee's petition, the Recorder will notify the General Counsel that the petition has been filed and that a timely filed petition stays further collection action.

§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing*. All documents required under this part must be filed by the former employee or the General Counsel in triplicate with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing*. The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and General Counsel should refer to it on any further filings regarding the petition.

(c) *Time computation*. A filing period under the rules in this part 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.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the General Counsel. If a former employee is represented by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States, further transmissions of documents and other communications with the former employee shall be made through his or her attorney rather than directly with the former employee.

§ 966.7 Answer to petition.

Within thirty (30) days after the date of receipt of the petition, the General Counsel shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's claim, or the administrative offset schedule proposed by the Postal Service for collecting any such claim; a statement of whether the Postal Service concurs in, or objects to, an oral hearing, if the former employee requests one, with the reason(s) for the Postal Service's objection; a list of witnesses the Postal Service intends to call if an oral hearing is requested and the request is granted; a synopsis of the testimony of each witness; a statement of concurrence or objection to the proposed location and dates for the oral hearing; and a statement of the basis for the determination of debt or offset schedule if not contained in the relevant records or documents. If the former employee files a supplement to the petition, the General Counsel may file any supplemental answer and records to support the position of the Postal Service within twenty (20) calendar days from the date of receipt of the supplement filed with the Recorder.

§ 966.8 Authority and responsibilities of Hearing Official or Judicial Officer.

(a) In processing a case under this part, the Hearing Official's authority includes, but is not limited to, the following:

(1) Ruling on all offers, motions, or requests by the parties;

(2) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;

(3) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties);

(4) Determining if an oral hearing is necessary, the type of oral hearing that would be appropriate, and setting the place, date, and time for such hearing;

(5) Administering oaths or affirmations to witnesses;

(6) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable, and probative evidence is elicited on the issues in dispute, and that irrelevant, immaterial, or repetitious evidence is excluded;

(7) Establishing the record in the case;

(8) Issuing an initial decision or one on remand; and

(9) Granting, at the request of either party, reasonable time extensions.

(b) The Judicial Officer, in addition to possessing such authority as is described elsewhere in this part, shall possess all of the authority and responsibilities of a Hearing Official.

§ 966.9 Opportunity for oral hearing.

An oral hearing generally will be held only in those cases which, in the opinion of the Hearing Official, cannot be resolved by a review of the documentary evidence, such as when the existence, or amount, of a debt turns on issues of credibility or veracity. An oral hearing includes an in-person hearing, a telephonic hearing, or a hearing by video conference. When the Hearing Official determines that an oral hearing is not necessary, the decision shall be based solely on written submissions.

§ 966.10 Initial decision.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of any post-hearing briefs, the Hearing Official shall issue a written initial decision, including findings of fact and conclusions of law, which the Hearing Official

relied upon in determining whether the former employee is indebted to the Postal Service, or in upholding or revising the administrative offset schedule proposed by the Postal Service for collecting a former employee's debt. When the Judicial Officer presides at a hearing he or she shall issue a final or a tentative decision.

(b) The Hearing Official shall promptly send to each party a copy of the initial or tentative decision, and a statement describing the right of appeal to the Judicial Officer in accordance with § 966.11.

§ 966.11 Appeal.

The initial or tentative decision will become final and an order to that effect will be issued by the Judicial Officer thirty (30) days after issuance and receipt by the parties of the initial or tentative decision unless the Judicial Officer, in his discretion, grants review upon appeal by either party, or on his own motion. If an appeal is denied, the initial or tentative decision becomes the final agency decision upon the issuance of such denial. The Judicial Officer's decision on appeal is the final agency decision with no further right of appeal within the agency.

§ 966.12 Waiver of rights.

The Hearing Official may determine the former employee has waived his or her right to a hearing and administrative offset may be initiated if the former employee:

(a) Files a petition for hearing after the end of the prescribed thirty (30) day period, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the former employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official; or

(d) Files a withdrawal of his or her petition for a hearing with the Recorder.

§ 966.13 Ex parte communications.

Ex parte communications between a Hearing Official or his or her staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.