

## United States Postal Service

## § 953.17

(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 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 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).

### § 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**

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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]