

United States Postal Service

§ 952.22

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

§ 952.23

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

39 CFR Ch. I (7-1-07 Edition)

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.