

§ 964.16

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]

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§ 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.

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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

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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 dock-

eting 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.