chief executive officer, chief operating officer, or other officer authorized to bind the organization.

§ 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 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 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 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 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 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.

§ 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 is in default. Whenever the General Counsel 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.

§ 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