

§ 959.2

39 CFR Ch. I (7-1-03 Edition)

§ 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.

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(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