

paragraph (i)(1)(iii) or (i)(1)(iv) of this section must show that the officer is an ASO by presenting a letter from the state attorney general describing the functions and authority of the officer under state law, with sufficient facts for the IRS to determine that the officer is an ASO.

(2) *Return* has the same meaning as in section 6103(b)(1).

(3) *Return information* has the same meaning as in section 6103(b)(2).

(4) *Taxable person* means any person who is liable or potentially liable for excise taxes under chapter 41 or 42. Such a person includes—

(i) a disqualified person described in section 4946(a)(1), 4951(e)(4), or 4958(f);

(ii) a foundation manager described in section 4946(b);

(iii) an organization manager described in section 4955(f)(2) or 4958(f)(2);

(iv) a person described in section 4958(c)(3)(B);

(v) an entity manager described in section 4965(d); and

(vi) a fund manager described in section 4966(d)(3).

(j) *Failure to comply*. Upon a determination that an ASO has failed to comply with the requirements of section 6103(p)(4), the IRS may take the actions it deems necessary to ensure compliance, including the refusal to disclose any further returns or return information to the ASO until the IRS determines that the requirements have been met. For procedures for the administrative review of a determination that an authorized recipient has failed to safeguard returns or return information, see § 301.6103(p)(7)-1.

(k) *Effective/applicability date*. The rules of this section apply to taxable years beginning on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2011-6011 Filed 3-14-11; 8:45 am]

**BILLING CODE 4830-01-P**

## POSTAL SERVICE

### 39 CFR Part 952

#### Rules of Practice in Proceedings Relative to False Representation and Lottery Orders

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service is proposing to adopt revised rules for proceedings relative to false representation and lottery orders. The primary purpose of this exercise is to update and align the rules with current practices.

**DATES:** Comments must be received on or before April 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Diane M. Mego, Esq., 703-812-1905.

**SUPPLEMENTARY INFORMATION:** The Postal Service is proposing to adopt revised rules for 39 CFR Part 952. These revised rules of procedure have the same general coverage as the existing rules. However, the revised rules have been updated, are more comprehensive than the existing rules, and are intended to reflect more precisely current practice.

These revised rules will completely replace the existing rules of practice and once adopted as a final rule, will be effective immediately in accordance with section 952.2. While the language of the proposed rules may have changed considerably for clarity, and to reflect more precisely the practices in these matters, we here identify the most significant changes of substance.

Section 952.7 is renamed from “Notice of answer and hearing” to “Notice of docketing and answer.” Under the previous rules, a hearing was automatically scheduled for hearing thirty days from receipt of the complaint. Hearings are now scheduled as needed by the presiding officer after the pleadings have been received. The notice from the Recorder will include the notice that the matter has been docketed and advise Respondent that an answer is required within 30 days.

Section 952.8 is modified to simplify service of the complaint and now requires Complainant to complete service of the notice of docketing and answer due date along with a copy of the complaint. Previously, the Recorder was required to forward the complaint and the notice of docketing and hearing due date to the local postmaster, who in turn served Respondent. The local postmasters have been removed from the procedure. The Recorder will now forward a copy of the notice of docketing and answer due date (see revised section 952.7), a copy of these rules and a docketed copy of the complaint to Complainant. Complainant is then responsible for obtaining service through certified mail, return receipt requested. Service is now complete upon mailing. Complainant is required to file either a receipt acknowledging the delivery of the notice or an affidavit of service if the mail is returned. Service may also be accomplished by hand.

Section 952.9 is modified to require the parties, after the filing of the initial complaint, to serve all pleadings, motions, proposed orders and other documents for the record on the opposing party and provide an appropriate affidavit of service. The new rule clarifies that discovery does not need to be filed with the presiding officer unless the parties are seeking to include it in the record or the presiding officer so orders. In addition, the rule is changed to allow the filing of pleadings, motions, proposed orders and other documents by facsimile and electronic mail at the discretion of the presiding officer.

Section 952.11 is modified to authorize the presiding officer to rule that a party that fails to respond to or comply with any order is in default. Currently, only a Respondent can be found in default and only for either failing to file an answer or for failing to appear at a hearing. The new rule will allow the presiding officer to enter a default against a non-responding party even if the initial pleadings have been received.

Section 952.16 requires an attorney representing Respondent to file a notice of appearance. An attorney for either party who is seeking to withdraw from representation must file a motion to withdraw, which will be granted at the discretion of the presiding officer. If a successor attorney is not appointed at the same time for Respondent, the withdrawn attorney must provide adequate contact information for Respondent.

Section 952.17(b)(10) is added to allow the presiding officer to resolve the proceeding on the written record without a hearing either at the request of the parties or on the presiding officer's own initiative. The current rules do not specifically allow for proceeding on the written record without a hearing.

Section 952.17(b)(11) is added to allow for a hearing to be conducted by telephone, video conference, or other appropriate means.

Section 952.21 is modified to allow the parties to participate in voluntary discovery without the intervention of the presiding officer and to clarify the discovery rules.

Accordingly, the Postal Service invites public comment on the following proposed rules.

#### List of Subjects in 39 CFR Part 952

Administrative practice and procedure, Fraud, False Representations, Lotteries, Penalties, Postal Service.

For the reasons stated in the preamble, the Postal Service proposes to revise 39 CFR part 952 to read as follows:

**PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS**

Sec.

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- 952.30 Supplemental orders.
- 952.31 Computation of time.
- 952.32 Official record.
- 952.33 Public information.
- 952.34 Ex parte communications.

**Authority:** 39 U.S.C. 204, 401, 3005, 3012, 3016.

**§ 952.1 Authority.**

These rules of practice are issued by the Judicial Officer of the United States Postal Service (see § 952.26) pursuant to authority delegated by the Postmaster General, and in accordance with 39 U.S.C. 3005, and are governed by the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

**§ 952.2 Scope.**

These rules of practice shall be applicable in all formal proceedings before the Postal Service under 39 U.S.C. 3005, including such cases instituted under prior rules of practice pertaining to these or predecessor statutes, unless timely shown to be prejudicial to Respondent.

**§ 952.3 Informal dispositions.**

This part does not preclude the disposition of any matter by agreement

between the parties either before or after the filing of a complaint when time, the nature of the proceeding, and the public interest permit.

**§ 952.4 Office business hours.**

The offices of the officials identified in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, and are open Monday through Friday except holidays from 8:15 a.m. to 4:45 p.m.

**§ 952.5 Complaints.**

When the Chief Postal Inspector or his or her designated representative believes that a person is using the mails in a manner requiring formal administrative action under 39 U.S.C. 3005, he or she shall prepare and file with the Recorder a complaint which names the person involved; states the name, address and telephone number of the attorney representing Complainant; states the legal authority and jurisdiction under which the proceeding is initiated; states the facts in a manner sufficient to enable the person named therein to answer; and requests the issuance of an appropriate order or orders and/or the assessment of civil penalties. Complainant shall attach to the complaint a copy of the order or orders requested which may, at any time during the proceedings, be modified. The person named in the complaint shall be known as “Respondent”, and the Chief Postal Inspector or his or her designee shall be known as “Complainant”. The term “person” (1 U.S.C. 1) shall include any name, address, number or other designation under or by use of which Respondent seeks remittances of money or property through the mail.

**§ 952.6 Interim impounding.**

In preparation for or during the pendency of a proceeding initiated under 39 U.S.C. 3005, mail addressed to Respondent may be impounded upon obtaining an appropriate order from a United States District Court, as provided in 39 U.S.C. 3007.

**§ 952.7 Notice of docketing and answer.**

(a) Upon receipt of a complaint filed against a Respondent whose mailing address is within the United States, the Recorder shall issue a notice of docketing and answer due date stating the date for an answer which shall not exceed 30 days from the service of the complaint and a reference to the effect of failure to file an answer and/or the assessment of civil penalties authorized by 39 U.S.C. 3012. (See §§ 952.10 and 952.11).

(b) Upon receipt of a complaint filed against a Respondent whose mailing

address is not within the United States, the Judicial Officer shall review the complaint and any supporting information and determine whether a prima facie showing has been made that Respondent is engaged in conduct warranting issuance of the orders authorized by 39 U.S.C. 3005(a). Where the Judicial Officer concludes that a prima facie showing has not been made the complaint shall be dismissed. Where the Judicial Officer concludes that a prima facie showing has been made, he or she shall issue a tentative decision and orders which: set forth findings of fact and conclusions of law; direct Respondent to cease and desist from engaging in conduct warranting the issuance of an order authorized by 39 U.S.C. 3005(a); direct that postal money orders drawn to the order of Respondent not be paid for 45 days from date of the tentative decision; direct that mail addressed to Respondent be forwarded to designated facilities and detained for 45 days from the date of the tentative decision subject to survey by Respondent and release of mail unrelated to the matter complained of; tentatively assess such civil penalties as he considers appropriate under applicable law; and provide that unless Respondent presents, within 45 days of the date of the tentative decision, good cause for dismissing the complaint, or modifying the tentative decision and orders, the tentative decision and orders shall become final. The Judicial Officer may, upon a showing of good cause made within 45 days of the date of the tentative decision, hold a hearing to determine whether the tentative decision and orders should be revoked, modified, or allowed to become final. Should a hearing be granted, the Judicial Officer may modify the tentative decision and orders to extend the time during which the payment of postal money orders payable to Respondent is suspended and mail addressed to Respondent is detained.

**§ 952.8 Service.**

(a) Where Respondent’s mailing address is within the United States, the Recorder shall cause a notice of docketing and answer due date (the “Notice”), a copy of these rules of practice, and a copy of the complaint to be transmitted to Complainant who shall serve those documents upon Respondent or his or her agent by certified mail, return receipt requested. Service shall be complete upon mailing. A receipt acknowledging delivery of the notice shall be secured from Respondent or his or her agent and forwarded to the Recorder, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington,

VA 22201–3078, to become a part of the official record. In the absence of a receipt, Complainant shall file an Affidavit of Service, along with returned undelivered mail, or other appropriate evidence of service, with the Recorder. In the alternative Complainant may, in its discretion, effectuate service by hand on Respondent and file an Affidavit of Service with the Recorder.

(b) Where the only address against which Complainant seeks relief is outside the United States, a copy of the complaint, the tentative decision, and a copy of these rules of practice shall be sent by international mail, return receipt requested, by the Recorder to the address cited in the complaint. A written statement by the Recorder noting the time and place of mailing shall be accepted as evidence of service in the event a signed return receipt is not returned to the Recorder.

#### **§ 952.9 Filing documents for the record.**

(a) Each party shall file with the Recorder pleadings, motions, proposed orders, and other documents for the record. Discovery need not be filed except as may be sought to be included in the record, or as may be ordered by the presiding officer. Each filing after the initial complaint shall be served upon all other parties to the proceeding by the filing party, and an affidavit of such service signed and dated by the filing party shall be included on the last page of such filing, which shall state as follows:

I, [name of filing party] hereby certify that I served the within [title of document] upon each party of record by electronic mail or first class mail on [date].

(b) The parties shall file one original of all documents filed under this section unless otherwise ordered by the presiding officer.

(c) Documents shall be dated and state the docket number and title of the proceeding. Any pleading or other document required by order of the presiding officer to be filed by a specified date must be received by the Recorder on or before such date. The date of filing shall be entered thereon by the Recorder.

(d) The presiding officer may permit filing of pleadings, motions, proposed orders, and other documents for the record by facsimile or by electronic mail with the Recorder.

#### **§ 952.10 Answer.**

(a) The answer shall contain a concise statement admitting, denying, or explaining each of the allegations set forth in the complaint.

(b) Any facts alleged in the complaint which are not denied or are expressly

admitted in the answer may be considered as proved, and no further evidence regarding these facts need be adduced at the hearing.

(c) 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.

(d) The answer shall set forth Respondent's address, electronic mail address, and telephone number or the name, address, electronic mail address, and telephone number of an attorney representing Respondent.

(e) The answer shall affirmatively state whether the Respondent will appear in person or by counsel at the hearing.

(f) In lieu of appearing at the hearing in person or by counsel, Respondent may request that the matter be submitted for determination pursuant to § 952.17(b)(10).

#### **§ 952.11 Default.**

(a) If Respondent fails to file an answer within the time specified in the notice of docketing and answer, Respondent may be deemed in default, and to have waived hearing and further procedural steps. The Judicial Officer may thereafter issue orders and/or assess civil penalties without further notice.

(b) If Respondent files an answer but fails to appear at the hearing, Respondent may, unless timely indications to the contrary are received, be deemed to have abandoned the intention to present a defense to the charges of the complaint, and the Judicial Officer, without further notice to Respondent, may issue the orders and/or assess civil penalties sought in the complaint.

(c) If Respondent or Complainant fails to respond to or comply with an order of the presiding officer, the party may be held in default, and absent good cause shown, the party may be deemed to have abandoned the intention to present a defense, or to prosecute the complaint, and the presiding officer or Judicial Officer, without further notice to the offending party, may, as appropriate, dismiss the complaint or issue the orders and/or assess civil penalties sought in the complaint.

#### **§ 952.12 Amendment of pleadings.**

(a) Amendments shall be filed with the Recorder.

(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 complaint, the presiding officer rule on the motion as he or she deems to be fair and equitable to the parties.

(c) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the complaint are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to conform the pleadings to the evidence and to raise such issues may be allowed at any time upon the motion of any party.

(d) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues raised by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him or her on the merits, the presiding officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(e) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have occurred since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

#### **§ 952.13 Continuances and extensions.**

Continuances and extensions will not be granted by the presiding officer except for good cause shown.

#### **§ 952.14 Hearings.**

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer. Time, date, and location for the hearing shall be set by the presiding officer in his or her sole discretion.

#### **§ 952.15 Change of place of hearings.**

A party may file a request that a hearing be held to receive evidence in his or her behalf at a place other than that designated in § 952.14. The party shall support the request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and,

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall give consideration to the convenience and necessity of the parties and witnesses and the relevance of the evidence to be offered.

**§ 952.16 Appearances.**

(a) Respondent may appear and be heard in person or by attorney. A Notice of Appearance must be filed by any attorney representing Respondent.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. *See* 39 CFR part 951.

(c) When Respondent is represented by an attorney, all pleadings and other papers subsequent to the complaint shall be mailed to the attorney.

(d) Withdrawal by any attorney representing a party must be preceded by a motion to withdraw stating the reasons therefore, and shall be granted in the discretion of the presiding officer. If a successor attorney is not appointed at the same time, withdrawing counsel shall provide adequate contact information for Respondent.

(e) Parties must promptly file a notice of change of attorney.

**§ 952.17 Presiding officers.**

(a) The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases. The Judicial Officer may, for good cause shown, preside at the hearing if an Administrative Law Judge is unavailable.

(b) The presiding officer shall have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses;
- (3) Rule upon offers of proof, admissibility of evidence, and matters of procedure;
- (4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;
- (5) Maintain discipline and decorum and exclude from the hearing any person acting in an inappropriate manner;
- (6) Require the filing of briefs or memoranda of law on any matter upon which he or she is required to rule;
- (7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;
- (8) Order the proceeding reopened at any time prior to his or her decision for the receipt of additional evidence;
- (9) Render an initial decision, which becomes the final agency decision unless a timely appeal is taken, except that the Judicial Officer may issue a tentative or a final decision;
- (10) Rule on motion by either party, or on his or her own initiative, for a determination on the written record in lieu of an oral hearing in his or her sole discretion;
- (11) Rule on motion by either party, or on his or her own initiative, to permit

a hearing to be conducted by telephone, video conference, or other appropriate means;

(12) Rule upon applications and requests filed under §§ 952.19 and 952.21; and,

(13) Exercise all other authority conferred upon the presiding officer by the Administrative Procedure Act or other applicable law.

**§ 952.18 Evidence.**

(a) Except as otherwise provided in these rules, the Federal Rules of Evidence shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to ensure a fair hearing. The presiding officer may exclude irrelevant, immaterial, or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice, judicial notice or administrative notice of appropriate information may be taken in the discretion of the presiding officer.

(e) Authoritative writings of the medical or other sciences, may be admitted in evidence but only through the testimony of expert witnesses or by stipulation.

(f) Lay testimonials may be received in evidence as proof of the efficacy or quality of any product, service, or thing sold through the mails, in the discretion of the presiding officer.

(g) The written statement of a competent witness may be received in evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states the witness's opinion or knowledge concerning the matters in question.

(h) A party which objects to the admission of evidence shall explain the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

**§ 952.19 Subpoenas.**

(a) *General.* Upon written request of either party filed with the Recorder or on his or her own initiative, the presiding officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of records.* The production by the witness at a deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its possession, custody or control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) Fifteen (15) days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his or her sole discretion, may honor requests for subpoenas not presented within the time limitations specified in this paragraph.

(d) *Motion to quash or modify.* (1) Upon written request by the person subpoenaed or by a party, the presiding officer may:

(I) Quash or modify the subpoena if it is unreasonable, oppressive or for other good cause shown, or

(II) Require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(2) Motions to quash or modify a subpoena shall be filed within 10 days of service, or at least one day prior to any scheduled hearing, whichever first occurs. The presiding officer, in his or her sole discretion, may entertain motions to quash or modify not made within the time limitations specified in this paragraph.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena

and may, in his or her discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness in accordance with 28 U.S.C. 1821, or other applicable law, and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service*—(1) *In general*. The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States*. A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Service outside the United States*. Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on business persons*. Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(5) *Service on natural persons*.

Service of any subpoena may be made upon any natural person by:

(i) Delivering a duly executed copy to the person to be served; or

(ii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his or her residence or principal office or place of business.

(6) *Verified return*. A verified return by the individual serving any such subpoena setting forth the manner of such service shall constitute proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena, or a statement of service by registered or certified mail in the event that receipt of delivery is unavailable.

(g) *Contumacy or refusal to obey a subpoena*. In the case of refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

**§ 952.20 Witness fees.**

The Postal Service does not pay fees and expenses for Respondent's witnesses or for depositions requested by Respondent, unless otherwise ordered by the presiding officer.

**§ 952.21 Discovery.**

(a) *Voluntary discovery*. The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *Discovery disputes*. The parties are required to make a good faith effort to resolve objections to discovery requests informally. A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but

such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(c) *Discovery limitations*. The presiding officer may limit the frequency or extent of use of discovery methods described in these rules. In doing so, generally the presiding officer will consider whether:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Interrogatories*. At any time after service of the complaint, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection, the presiding officer will determine the extent to which the interrogatories will be permitted.

(e) *Requests for admission*. At any time after service of the complaint, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request may be ordered by the presiding officer as deemed admitted upon the failure of a party to respond timely and fully to the request for admissions.

(f) *Requests for production of documents*. At any time after service of the complaint, a party may serve on the other party written requests for the production, inspection, and copying of any documents, electronically stored information, or things, to be answered within 30 days. Upon timely objection, the presiding officer will determine the extent to which the requests must be satisfied, and if the parties cannot themselves agree thereon, the presiding officer shall specify just terms and conditions for compliance.

(g) *Depositions*. Except as stated herein, depositions shall be conducted in accordance with Rule 30 of the Federal Rules of Civil Procedure.

(1) After a complaint has been filed and docketed, the parties may mutually

agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(2) The time, place, and manner of conducting depositions shall be as mutually agreed by the parties or, failing such agreement, and upon proper application, governed by order of the presiding officer.

(3) No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at or before such hearing. It will not ordinarily be received in evidence if the deponent is available to testify at the hearing, but the presiding officer may admit testimony taken by deposition in his or her discretion. A deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the written record in lieu of an oral hearing, the presiding officer may, in his or her discretion, receive depositions as evidence in supplementation of that record.

(4) Each party shall bear its own expenses associated with the taking of any deposition unless otherwise ordered by the presiding officer.

(h) *Sanctions.* If a party fails to appear for a deposition, after being served with a proper notice, or fails to serve answers or objections to interrogatories, requests for admissions, or requests for the production or inspection of documents, after proper service, the party seeking discovery may request that the presiding officer impose appropriate orders. 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. In the sole discretion of the presiding officer, failure of a party to comply with an order pursuant to this rule may result in the presiding officer's issuance of an order of default under § 952.11(c).

#### **§ 952.22 Transcript.**

(a) Hearings shall be reported and transcribed by a court reporter. 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 Respondent from the Recorder upon the payment of reasonable copying charges. Items that cannot reasonably be photocopied may be photographed and furnished in that form.

(b) Changes in the official transcript may be ordered by the presiding officer only to correct errors affecting substance and then only in the manner herein provided. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he or she 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 or her 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 or her 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.

#### **§ 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 or she 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 30 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of 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 representative shall cease and desist from using for the purpose of obtaining money or property through the mail.

#### **§ 952.24 Decisions.**

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge as soon as practical after completion of the hearing, or after close of the record in matters heard upon the written record in lieu of an oral hearing under § 952.17(b)(10). 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 or she 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.

(c) *Oral decisions.* The presiding officer may render an oral decision (an initial decision by an Administrative

Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing when the nature of the case and the public interest warrant. A party which desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings, conclusions, and proposed orders either orally or in writing at the conclusion of the hearing.

**§ 952.25 Exceptions to initial decision or tentative decision.**

(a) A party in a proceeding presided over by an Administrative Law Judge may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's initial decision.

(b) A party in a proceeding presided over by the Judicial Officer may file exceptions within 15 days from the receipt of the Judicial Officer's tentative decision.

(c) If an initial or tentative decision is rendered orally by the presiding officer at the close of the hearing, he or she may then orally provide notice to the parties participating in the hearing of the time limit within which an appeal must be filed.

(d) The date for filing the reply to an appeal brief or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(e) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in duplicate with the Recorder and contain the following matter:

(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; and

(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.

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed pages double spaced, using 12 point type.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. If the appeal brief or brief in support of exceptions is not filed within the time prescribed, the defaulting party may be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final agency decision.

**§ 952.26 Judicial Officer.**

(a) The Judicial Officer is authorized:

(1) To act as presiding officer;

(2) To render tentative decisions;

(3) To render final agency decisions;

(4) To issue Postal Service orders for the Postmaster General;

(5) To refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final agency decision;

(6) To remand a case to the presiding officer for consideration; and,

(7) To revise or amend these rules of practice.

(b) In determining appeals from initial decisions or exceptions to tentative decisions, the entire official record will be considered before a final agency decision is rendered. Before rendering a final agency decision, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

**§ 952.27 Motion for reconsideration.**

A party may file a motion for reconsideration of a final agency decision within 10 days after receiving it or within such longer period as the Judicial Officer may order. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

**§ 952.28 Orders.**

(a) If an order is issued which prohibits delivery of mail to Respondent 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.

(b) If an order is issued which requires Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the

proceeding and a copy thereof shall be served upon Respondent or his or her or its agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his or her or its agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

**§ 952.29 Modification or revocation of orders.**

A party against which 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 filing or such other period as the Judicial Officer may order. 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.

**§ 952.30 Supplemental orders.**

When the Chief Postal Inspector or his or her designee, or the Chief Postal Inspector's designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address, he or she may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the name or names allegedly used. Notice shall then be given by the Recorder to the person that the order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

**§ 952.31 Computation of time.**

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

**§ 952.32 Official record.**

The hearing transcript together with all pleadings, orders, exhibits, briefs and other documents filed in the proceeding



shall constitute the official record of the proceeding.

#### § 952.33 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. The Recorder maintains the complete official record of every proceeding.

#### § 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications apply to proceedings under these rules of practice.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2011–5872 Filed 3–14–11; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2011–0131, FRL–9280–5]

#### Approval and Promulgation of Air Quality Implementation Plans; State of California; Regional Haze State Implementation Plan and Interstate Transport Plan; Interference With Visibility Requirement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the California State Implementation Plan (SIP) that addresses regional haze for the first implementation period through 2018. This revision addresses the requirements of the Clean Air Act (CAA or “Act”) and EPA’s rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the “regional haze program”). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

In addition, we are proposing to approve certain portions of this Regional Haze SIP revision and a related SIP revision submitted by California on November 16, 2007, as meeting the requirements of CAA Section 110(a)(2)(D)(i)(II) regarding interference with other states’ measures to protect visibility for the 1997 8-hour ozone and 1997 particulate matter (PM<sub>2.5</sub>) National

Ambient Air Quality Standards (NAAQS).

**DATES:** Written comments must be received at the address below on or before April 14, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R09–OAR–2011–0131 by one of the following methods:

1. *Federal Rulemaking portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* [Wamsley.Jerry@epa.gov](mailto:Wamsley.Jerry@epa.gov).

3. *Fax:* 415–947–3579 (Attention: Jerry Wamsley).

4. *Mail:* Jerry Wamsley, EPA Region 9, Air Division, Planning Office (Air-2), 75 Hawthorne Street, San Francisco, California 94105.

5. *Hand Delivery or Courier:* Such deliveries are only accepted Monday through Friday, 8:30 a.m.–4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA–R09–OAR–2011–0131. Our policy is that EPA will include all comments received in the public docket without change. EPA may make comments available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, EPA will include your e-mail address as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA

Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov>, or in hard copy at the EPA Region 9, Air Division, Planning Office, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9–5:30 PST, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, U.S.E.P.A., Region 9, Air Division, Planning Office, Air-2, 75 Hawthorne Street, San Francisco, CA 94105; via telephone at (415) 947–4111; or via electronic mail at [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” or “our,” refer to EPA.

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