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POSTAL SERVICE

39 CFR Part 957

Rules of Practice before the Judicial Officer

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document contains the final revisions to the rules of practice before the Judicial Officer in proceedings relative to debarment from contracting.

DATES: *Effective:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written inquiries may be directed to: Postal Service Judicial Officer Department, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

FOR FURTHER INFORMATION CONTACT: Associate Judicial Officer Gary E. Shapiro, (703) 812-1910.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

On July 1, 2015, the Judicial Officer Department published for comment proposed revisions to the rules of practice before the Judicial Officer for proceedings relative to debarment from contracting (80 FR 37565-7). The period for comments closed on July 31, 2015, and no comments were received. The Judicial Officer has made no further revisions to the original proposed rules, which are adopted as final. The new rules completely replace the former rules of 39 CFR part 957.

B. Background

The rules of practice in proceedings relative to debarment from contracting are set forth in 39 CFR part 957. This authority is delegated by the Postmaster General. The rules are being changed to effectuate the Postal Service's present debarment procedures, at 39 CFR part 601, and the Judicial Officer's role in those procedures.

In 2007, the Postal Service changed its procurement regulations regarding suspension and debarment from contracting. See 72 FR 58252 (October 15, 2007). Whereas prior to that change, the Judicial Officer conducted hearings and rendered final agency decisions regarding suspension and debarment from contracting, the revised procurement regulations at 39 CFR 601.113 eliminated any role of the Judicial Officer from suspensions, and reserved final agency action regarding debarments to the Vice President, Supply Management. The remaining role of the Judicial Officer relative to debarment from contracting is set forth in paragraphs (g)(2) and (h)(2) of § 601.113. Those paragraphs provide that the Vice President, Supply Management, may request the Judicial Officer to conduct fact-finding hearings to resolve questions of material facts involving a debarment, and will consider those findings when deciding the matter. Under paragraph (h)(2) of § 601.113, fact-finding hearings will be governed by rules of procedure promulgated by the Judicial Officer. These new rules of procedure satisfy that requirement.

List of Subjects in 39 CFR Part 957

Administrative practice and procedure, Government contracts.

Accordingly, for the reasons stated, the Postal Service revises 39 CFR part 957 to read as follows:

**PART 957--RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DEBARMENT
FROM CONTRACTING**

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Authority: 39 U.S.C. 204, 401.

§ 957.1 Authority for rules.

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. 204, 401).

§ 957.2 Scope of rules.

The rules in this part apply to proceedings initiated pursuant to paragraphs (g)(2) or (h)(2) of § 601.113 of this subchapter.

§ 957.3 Definitions.

(a) *Vice President* means the Vice President, Supply Management, or the Vice President's representative for the purpose of carrying out the provisions of § 601.113 of this subchapter.

(b) *General Counsel* includes the Postal Service's General Counsel and any designated representative within the Office of the General Counsel.

(c) *Judicial Officer* includes the Postal Service's Judicial Officer, Associate Judicial Officer, and Acting Judicial Officer.

(d) *Debarment* has the meaning given by paragraph (b)(2) of § 601.113 of this subchapter.

(e) *Respondent* means any individual, firm or other entity which has been served a written notice of proposed debarment pursuant to § 601.113(h), or which previously has been debarred, as provided in § 601.113(g)(2) of this subchapter.

(f) *Hearing Officer* means the judge assigned to the case by the Judicial Officer. The Hearing Officer may be the Judicial Officer, Associate Judicial Officer, Administrative Law Judge or an Administrative Judge who is a member of the Postal Service Board of Contract Appeals.

(g) *Recorder* means the Recorder of the Judicial Officer Department of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. The Recorder's telephone number is (703) 812-1900, fax number is (703) 812-1901, and the Judicial Officer's Web site is <http://www.about.usps.com/who-we-are/judicial/welcome.htm>.

§ 957.4 Authority of the Hearing Officer.

The Hearing Officer's authority includes, but is not limited to, the following:

- (a) Ruling on all motions or requests by the parties.
- (b) Issuing notices, orders, or memoranda to the parties concerning the hearing proceedings.

(c) Conducting conferences with the parties. The Hearing Officer will prepare a Memorandum of Conference, which will be transmitted to both parties and which serves as the official record of that conference.

(d) Determining whether an oral hearing will be conducted, and setting the place, date, and time for such a hearing.

(e) Administering oaths or affirmations to witnesses.

(f) Conducting the proceedings and the hearing in a manner to maintain discipline and decorum while ensuring that relevant, reliable and probative evidence is elicited, but irrelevant, immaterial or repetitious evidence is excluded. The Hearing Officer in his or her discretion may examine witnesses to ensure that a satisfactory record is developed.

(g) Establishing the record. The weight to be attached to evidence will rest within the discretion of the Hearing Officer. Except as the Hearing Officer may otherwise order, no proof shall be received in evidence after completion of a hearing. The Hearing Officer may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter.

(h) Granting reasonable time extensions or other relief for good cause shown, in the Hearing Officer's sole discretion.

(i) Issuing findings of fact. The Hearing Officer will issue findings of fact to the Vice President within 30 days from the close of the record, to the extent practicable.

§ 957.5 Case initiation.

(a) Upon receipt of a request or referral from the Vice President, the Recorder will docket a case under this Part. Following docketing, the Judicial Officer will assign a

Hearing Officer. The Hearing Officer will establish the schedule for the proceeding, perform all judicial duties under this Part and render Findings of Fact. Whenever practicable, a hearing should be conducted within 30 days of the date of docketing.

(b) The request or referral from the Vice President shall include the notice of proposed debarment and the information or argument submitted by the Respondent pursuant to paragraphs (g) or (h) of § 601.113 of this subchapter.

§ 957.6 Filing documents for the record.

The parties shall file documents, permitted by the rules in this part or required by the Hearing Officer, in the Judicial Officer Department's electronic filing system. The Web site for electronic filing is <https://uspsjoe.justware.com/justiceweb>. Documents submitted using that system are considered filed as of the date and time (Eastern Time) reflected in the system. Orders issued by the Hearing Officer shall be considered received by the parties on the date posted to the electronic filing system.

§ 957.7 Failure to appear at the hearing.

If a party fails to appear at the hearing, the Hearing Officer may proceed with the hearing, receive evidence and issue findings of fact without requirement of further notice to the absent party.

§ 957.8 Hearings.

Hearings ordinarily will be conducted in the Judicial Officer Department courtroom at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. However, the Hearing Officer, in his or her discretion, may order the hearing to be conducted at another location, or by another means such as by video.

§ 957.9 Appearances.

(a) An individual Respondent may appear in his or her own behalf, a corporation may appear by an officer thereof, a partnership or joint venture may appear by a member thereof, or any of these may appear by a licensed attorney.

(b) After a request for a hearing has been filed pursuant to the rules in this part, the General Counsel shall designate a licensed attorney as counsel assigned to handle the case.

(c) All counsel, or a self-represented Respondent, shall register in the electronic filing system, and request to be added to the case. Counsel also promptly shall file notices of appearance.

(d) An attorney for any party who has filed a notice of appearance and who wishes to withdraw must file a motion requesting withdrawal, explaining the reasons supporting the motion, and identifying the name, email address, mailing address, telephone number, and fax number of the person who will assume responsibility for representation of the party in question.

§ 957.10 Conduct of the hearing.

The Hearing Officer may approve or disapprove witnesses in his or her discretion. All testimony will be taken under oath or affirmation, and subject to cross-examination. The Hearing Officer may exclude evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or presentation of irrelevant, immaterial, or cumulative evidence. Although the Hearing Officer will consider the Federal Rules of Evidence for guidance regarding admissibility of evidence and other evidentiary issues, he or she is not bound by those rules. The weight to be attached to

evidence presented in any particular form will be within the discretion of the Hearing Officer, taking into consideration all the circumstances of the particular case.

Stipulations of fact agreed upon by the parties may be accepted as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Hearing Officer may in any case require evidence in addition to that offered by the parties. A party requiring the use of a foreign language interpreter allowing testimony to be taken in English for itself or witnesses it proffers is responsible for making all necessary arrangements and paying all costs and expenses associated with the use of an interpreter.

§ 957.11 Witness fees.

Each party is responsible for the fees and costs for its own witnesses.

§ 957.12 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the Hearing Officer otherwise orders. Transcripts of the proceedings will be made available or provided to the parties.

§ 957.13 Proposed findings of fact.

(a) The Hearing Officer may direct the parties to submit proposed findings of fact and supporting explanations within 15 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 shall be the same for both parties.

(b) Proposed findings of fact shall be set forth in 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.

§ 957.14 Findings of fact.

The Hearing Officer shall issue written findings of fact, and transmit them to the Vice President. Copies will be sent to the parties.

§ 957.15 Computation of time.

A designated period of time under the rules in this part 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.

§ 957.16 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 957.17 Public information.

The Postal Service shall maintain for public inspection copies of all findings of fact issued under this Part, and make them available through the Postal Service Web site. The Recorder maintains the complete official record of every proceeding.

§ 957.18 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.

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