

Subpart C—Hearing and Appeal Procedures

GENERAL

§ 904.200 Scope and applicability.

(a) This subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final administrative decisions of NOAA involving alleged violations of the laws cited in § 904.1(c) and any other laws or authorities administered by NOAA and regulations implementing these laws, including civil penalty assessments and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

(b) The Judge is delegated authority to make the initial or final administrative decision of the Agency in proceedings subject to the provisions of this subpart, and to take actions to promote the efficient and fair conduct of hearings as set out in this subpart. The Judge has no authority to rule on constitutional issues or challenges to the validity of regulations promulgated by the Agency or statutes administered by NOAA.

(c) This subpart is not an independent basis for claiming the right to a hearing but, instead, prescribes procedures for the conduct of hearings, the right to which is provided by other authority.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38937, June 30, 2022]

§ 904.201 Hearing requests and case docketing.

(a) If the respondent wishes a hearing on a NOVA, NOPS or NIDP, the request must be dated and in writing, and must be served in conformance with § 904.3 on the Agency counsel specified in the notice. The respondent must either attach a copy of the NOVA, NOPS or NIDP or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(b) Any party requesting a hearing under § 904.102(a)(3) must provide current contact information, including a working telephone number and email address (if one is available). The Agency and the Office of Administrative

Law Judges must be promptly notified of any changes to this information.

(c) If a written application is made to NOAA after the expiration of the time period established in this part for the required filing of hearing requests, Agency counsel will promptly forward the request for hearing along with documentation of service and any other relevant materials to the Office of Administrative Law Judges for a determination on whether such request shall be considered timely filed. Determinations by the Judge regarding untimely hearing requests under this section shall be in writing.

(d) Upon its receipt for filing in the Office of Administrative Law Judges, each request for hearing will be promptly assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

[87 FR 38937, June 30, 2022]

§ 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed directly with the Office of Administrative Law Judges, be served on all other parties, and conform with all applicable requirements of § 904.3.

(b) Unless otherwise ordered by the Judge, discovery requests and answers will be served on the opposing party and need not be filed with the Judge.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38938, June 30, 2022]

§ 904.203 [Reserved]

§ 904.204 Duties and powers of Judge.

The Judge has all powers and responsibilities necessary to preside over the parties and the hearing, to hold pre-hearing conferences, to conduct the hearing, and to render decisions in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to do the following:

(a) Rule on timeliness of hearing requests pursuant to § 904.201(c);

(b) Rule on a request to participate as a party in the hearing by allowing, denying, or limiting such participation