

**§ 148.255**

**33 CFR Ch. I (7-1-03 Edition)**

**§ 148.255 Jurisdiction of the administrative law judge.**

(a) The jurisdiction of the administrative law judge over a proceeding begins when he is assigned. His jurisdiction ends 20 days after the transcript of the formal hearing is docketed or when he issues notice of withdrawal from the proceeding.

(b) The Commandant exercises the authority of an administrative law judge in a proceeding when no administrative law judge has jurisdiction.

**§ 148.257 Authority of the administrative law judge.**

The administrative law judge assigned to a formal hearing may:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas;
- (c) Adopt procedures for the submission of evidence in written form;
- (d) Rule on offers of proof and receive relevant evidence;
- (e) Examine witnesses at the formal hearing;
- (f) Dispose of procedural requests or similar matters;
- (g) Convene, recess, reconvene, adjourn, and otherwise regulate the course of the formal hearing;
- (h) Certify questions to the Commandant;
- (i) If a party to a formal hearing fails to appear at a session of the hearing, proceed with the session without further notice to the party;
- (j) Extend or shorten a time prescribed by this subpart to the extent consistent with the 240 days time limit prescribed in section 5(g) of the Act for completing public hearings in a proceeding;
- (k) Prescribe a time for doing an act if the time is not prescribed in this subpart; and
- (l) Take any other action authorized by or consistent with this subpart, the Act, or 5 U.S.C. 551-559.

**§ 148.259 Ex parte communications.**

If two or more applications have been filed in a proceeding, or if a person opposing an application has intervened in the proceeding, the administrative law judge may not consult any party on a fact in issue except on notice and opportunity for all parties to participate.

The administrative law judge must prepare a summary of and have docketed each ex parte communication in the proceeding.

**§ 148.261 Parties.**

The parties to a formal hearing are the application staff, the applicants, and intervenors in the proceeding.

**§ 148.263 Intervention.**

(a) Any person may file a petition to intervene in a formal hearing, and any adjacent coastal state may intervene by filing a notice of intervention. The petition must be addressed to the administrative law judge, must identify the specific matters in the hearing on which he seeks to intervene and his interest in those matters, and must designate the name and address of a person upon whom service may be made if the petition is granted. A party to the formal hearing may file an answer to a petition within five days after the petition is filed.

(b) A petition to intervene must be filed within ten days after notice of formal hearing is issued.

(c) Intervention may be limited to particular matters or to particular times in the hearing if necessary to prevent repetitious evidence and argument or to control the course of the formal hearing.

(d) If the administrative law judge denies a petition in whole or part, the petitioner may appeal to the Commandant by filing notice of appeal within seven days after the denial is issued. A brief may be filed with the notice of appeal. A party may file a brief in support of or in opposition to the appeal within seven days after the notice of appeal is filed.

**§ 148.265 A person not a party.**

(a) At any time before a formal hearing, any person who is not a party may submit to the administrative law judge a petition to present evidence at the formal hearing. The petition must be sent to the administrative law judge or to the clerk who will forward it to the administrative law judge. The petition must contain a statement describing in detail the evidence to be presented and must show its relevancy to factual

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issues listed in the notice of formal hearing.

(b) If a petition is granted, the ruling delineates the evidence that may be presented at the formal hearing.

**§ 148.267 Appearance and practice.**

(a) Each party to a formal hearing, except an individual, must appear by his attorney. Each attorney must file a notice of appearance that states his name, address, telephone number, and the name of the person he represents. With his notice of appearance, each attorney must file a written authorization from his client.

(b) Each attorney representing a person in a proceeding must be admitted, and be in good standing, to practice before a court of the United States or the highest court of any State, territory or possession of the United States.

(c) The administrative law judge assigned to the formal hearing may suspend or bar an attorney from representing a person in the proceeding if he finds that the attorney has failed to conform to the standards of conduct required for attorneys in the Courts of the United States.

(d) The administrative law judge may exclude any person from a formal hearing or a conference if the person is contumacious at the hearing or conference.

**§ 148.269 Requirements for documents.**

(a) Each document, except an application, filed in a proceeding or submitted to the administrative law judge must:

(1) List the docket number of the proceeding; and

(2) Be signed in ink by the person filing or submitting the document and show the capacity of the person signing, his address, and the date of signing.

(b) Each document filed in a proceeding, except an application, must:

(1) Be accompanied by ten copies of the document;

(2) Show the name and address of each person upon whom a copy of the document has been served;

(3) Be accompanied by an affidavit showing proof of service if the person serving the process is not an attorney; and

(4) Contain the following certificate of service if the person serving the process is an attorney:

I hereby certify that I have this day served the foregoing document upon \_\_\_\_\_ in accordance with 33 CFR 148.275.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature

For \_\_\_\_\_

Name of Party or Petitioner

**§ 148.271 Subscription.**

The signature on a document filed, served, or submitted to the administrative law judge in a proceeding is certification by the person signing that he has full authority to sign the document, that he has read it and knows its contents, that to the best of his knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay.

**§ 148.273 Filing.**

(a) A document is filed in a proceeding when it meets the requirements in §148.269 and is deposited in the mail or, if not mailed, is received by the clerk.

(b) If the clerk receives a document that does not comply with §148.269 he returns it to the person who submitted it with a statement of reasons for the return.

(c) Filing by mail must be by certified mail.

**§ 148.275 Service of document: other transmittal.**

(a) The clerk serves each order, ruling, decision, and notice upon all parties to a formal hearing when issued, except a document issued at the formal hearing or a prehearing conference.

(b) Each document before it is filed in a proceeding must be served upon:

(1) All parties, except the person filing the document; and

(2) The administrative law judge or if no administrative law judge has jurisdiction, the Commandant.

(c) Service of a document upon a party must be made upon the attorney representing the party or, for a party not represented by an attorney, upon the party.