

§ 148.277

(d) Service must be made by handing a copy of the document to the person to be served or depositing a copy of the document in the mail.

(e) This section does not apply to service of subpoenas. Rules for serving subpoenas are in § 148.281.

(f) The clerk mails to a person who is not a party, and who has submitted a petition or motion in the proceeding, a copy of the ruling on the petition or motion when issued and a copy of the action taken on any appeal of the petition. He mails a copy of the notice of the formal hearing, when the notice is issued, to each person whose petition to present evidence has been granted under § 148.265.

(g) The clerk provides the applicants and the administrative law judge with a copy of each application and report of public hearing docketed in the proceeding.

§ 148.277 Conferences.

(a) The administrative law judge may hold one or more prehearing conferences to give the parties an opportunity to present and consider facts and arguments, to exchange exhibits proposed to be offered in evidence, and to obtain stipulations, admissions, and agreements to produce documents and other tangible things. The administrative law judge may consider at a conference the procedure to be followed at the formal hearing, limitations on the number of witnesses at the hearing, and any other matters that may expedite the disposition of the proceeding.

(b) The administrative law judge may hold conferences during a formal hearing to expedite the disposition of the proceeding.

(c) If a prehearing conference is held, the administrative law judge issues a notice reciting the action taken at the conference and any agreements made between the parties.

§ 148.279 Motions.

(a) Any request for a ruling or relief in a proceeding, except a request for a subpoena or a petition to intervene or present evidence at a formal hearing, must be submitted by motion. Each motion must be addressed to the administrative law judge, state the ruling or relief sought and the grounds there-

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for, and be accompanied, if appropriate, by a proposed order. Each written motion must be filed. An oral motion may be made only at the formal hearing or a conference.

(b) Within seven days after service of a written motion, a party may file an answer supporting or opposing the motion.

(c) Unless otherwise authorized by the administrative law judge, no oral argument is heard on a written motion. A brief may be filed with a written motion or an answer to a written motion.

(d) The administrative law judge issues a ruling and any appropriate order for each motion made.

(e) Except as otherwise provided in §§ 148.253 and 148.263, a ruling of the administrative law judge on a motion may not be appealed to the Commandant. The administrative law judge may refer any ruling to the Commandant for review if he determines that the ruling involves an important question of law or policy.

§ 148.281 Subpoenas.

(a) At any time before a formal hearing is completed, a party may submit a request to the administrative law judge for issuance of a subpoena. A request for issuance of a subpoena must show the general relevance and scope of the evidence sought.

(b) A proposed subpoena and fifteen copies, and witness fees for one day and mileage, must be submitted with each request. A proposed subpoena must contain:

(1) The docket number of the proceeding;

(2) The captions "Department of Transportation," "Coast Guard," and "Licensing of Deepwater Port for coastal waters off (*insert name of the coastal state closest to the proposed deepwater port and the docket number of the proceeding*)";

(3) The name and office of the administrative law judge;

(4) A statement commanding the person to whom the subpoena is directed to attend the formal hearing and give testimony or, for a subpoena to produce documentary evidence, a statement commanding the person to produce designated documents, books,

papers, or other tangible things at a designated time or place; and

(5) Explanation of the procedure in § 148.279 and paragraph (e) of this section for quashing a subpoena.

(c) Unless otherwise authorized by the administrative law judge, a subpoena must be served in accordance with Rule 45 of the Federal Rules of Civil Procedure.

(d) A subpoenaed witness is paid the same fees and mileage paid to witnesses subpoenaed in District Courts of the United States. The person requesting a subpoena must pay the fees and mileage.

(e) Any motion to quash a subpoena must be submitted within seven days after service of the subpoena.

(f) If a person does not comply with a subpoena and the administrative law judge on motion rules that good cause has been shown for seeking judicial enforcement of a subpoena, he refers his ruling to the Commandant.

§ 148.283 Hearing date.

(a) The administrative law judge schedules the formal hearing by issuing a notice to the parties.

(b) The clerk mails or delivers a copy of the notice to any person who requests it.

§ 148.285 Reporter: transcript; corrections.

(a) The reporter for a formal hearing is arranged for by the clerk. The reporter prepares a verbatim transcript of the hearing under the supervision of the administrative law judge. Nothing may be deleted from the transcript unless ordered by the administrative law judge and noted in the transcript.

(b) After a formal hearing is completed, the administrative law judge certifies and forwards the transcript to the clerk for docketing.

(c) At any time within 20 days after the transcript is docketed, the administrative law judge may make corrections to the certified transcript. Corrections when filed are attached to the transcript as appendices. Any motion to correct the transcript must be submitted within ten days after the transcript is docketed.

§ 148.287 Order of procedure.

The administrative law judge determines the order of procedure for each formal hearing.

§ 148.289 Evidence.

A party may present evidence and conduct cross-examination of witnesses at a formal hearing. Other persons may present evidence that they have been authorized to present under § 148.265.

§ 148.291 Rulings referred or appealed to the Commandant.

(a) The Commandant reviews each ruling referred or appealed to him under this subpart and issues a ruling and any appropriate order. Unless otherwise ordered by the Commandant or the administrative law judge, review of a ruling does not stay a formal hearing or extend a time period prescribed by this subpart.

(b) If the administrative law judge refers a ruling to the Commandant, he gives notice to the parties of the referral.

APPLICATION APPROVAL OR DENIAL

§ 148.321 Decision process generally.

(a) During the 45-day period immediately following the completion of the final public hearing on a proposed deepwater port license for a designated application area, opportunity is provided for the various Federal departments and agencies having expertise concerning, or jurisdiction over, any aspect of ownership, construction, or operation of deepwater ports or having a duty under the Act with respect thereto and the Governor of each adjacent coastal State to formulate and transmit to the Secretary their determinations, recommendations, opinions and approvals or disapprovals, as the case may be.

(b) Within 45 days after the expiration of the 45-day period described in paragraph (a) of this section, the Secretary approves or denies each application for a deepwater port license in the designated application area.

§ 148.323 Criteria and considerations.

(a) The Secretary approves an application only after he determines that: