

§ 228.5

- (3) The legal authority under which the hearing is to be held;
- (4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));
- (5) Issues of fact which may be involved in the hearing;
- (6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;
- (7) Any written advice received from the Marine Mammal Commission;
- (8) The place(s) where records and submitted direct testimony will be kept for public inspection;
- (9) The final date for filing with the Assistant Administrator a notice of intent to participate in the hearing pursuant to §228.5;
- (10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;
- (11) The docket number assigned to the case which shall be used in all subsequent proceedings; and
- (12) The place and date of the prehearing conference.

§ 228.5 Notification by interested persons.

Any person desiring to participate as a party shall notify the Assistant Administrator, by certified mail, on or before the date specified in the notice.

§ 228.6 Presiding officer.

- (a) Upon publication of the notice of hearing pursuant to §228.4, the Assistant Administrator shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.
- (b) The presiding officer, in any proceeding under this subpart, shall have power to:
 - (1) Change the time and place of the hearing and adjourn the hearing;
 - (2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the

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- hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;
 - (3) Rule upon motions, requests and admissibility of direct testimony;
 - (4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;
 - (5) Modify or waive any rule (after notice) when determining that no party will be prejudiced;
 - (6) Receive written comments and hear oral arguments;
 - (7) Render a recommended decision; and
 - (8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.
- (c) In case of the absence of the original presiding officer or the original presiding officer's inability to act, the powers and duties to be performed by the original presiding officer under this subpart in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Assistant Administrator.
- (d) The presiding officer may upon the presiding officer's own motion withdraw as presiding officer in a proceeding if the presiding officer deems himself or herself to be disqualified.
- (e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Assistant Administrator shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Assistant Administrator may deem appropriate in the circumstances.

§ 228.7 Direct testimony submitted as written documents.

- (a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later