

§ 148.238

- (e) Examine witnesses;
- (f) Rule on motions of the parties;
- (g) Suspend or bar an attorney from representing a person in the proceeding for unsuitable conduct;
- (h) Exclude any person for disruptive behavior during the hearing;
- (i) Set the hearing schedule;
- (j) Certify questions to the Commandant (G-P);
- (k) Proceed with a scheduled session of the hearing in the absence of a party who failed to appear;
- (l) Extend or shorten a non-statutorily imposed deadline under this subpart within the 240-day time limit for the completion of public hearings in 33 U.S.C. 1504(g);
- (m) Set deadlines not specified in this subpart or the Deepwater Ports Act; and
- (n) Take any other action authorized by or consistent with this subpart, the Deepwater Ports Act, or 5 U.S.C. 551-559.

§ 148.238 Who are the parties to a formal hearing?

The parties to a formal hearing are:

- (a) The applicant;
- (b) The Commandant (G-P); and
- (c) Any person intervening in the proceedings.

§ 148.240 How does a State or a person intervene in a formal hearing?

- (a) Any person or adjacent coastal State may intervene in a formal hearing.
- (b) A person must file a petition of intervention within 10 days of notice that the formal hearing is issued. The petition must:
 - (1) Be addressed to the *Administrative Law Judge* (ALJ) Docketing Center;
 - (2) Identify the issues and the petitioner's interest in those issues; and
 - (3) Designate the name and address of a person who can be served if the petition is granted.
- (c) An adjacent coastal State need only file a notice of intervention with the ALJ Docketing Center.
- (d) The ALJ has the authority to limit the scope and period of intervention during the proceeding.
- (e) If the ALJ denies a petition of intervention, the petitioner may file a notice of appeal with the ALJ Dock-

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eting Center within 7 days of the denial.

(1) A brief may be submitted with the notice of appeal.

(2) Parties who wish to file a brief in support of or against the notice of appeal may do so within 7 days of filing the notice.

(f) The Commandant (G-P) will rule on the appeal. The ALJ does not have to delay the proceedings for intervention appeals.

§ 148.242 How does a person who is not a party to a formal hearing present evidence at the hearing?

(a) A person who is not a party to a formal hearing may present evidence at the hearing if he or she sends a petition to present evidence to the ALJ Docketing Center before the beginning of the formal hearing. The petition must describe the evidence that the person will present and show its relevance to the issues listed in the notice of formal hearing.

(b) If a petition is granted, the ruling will specify which evidence is approved to be presented at the hearing.

§ 148.244 Who must represent the parties at a formal hearing?

(a) All organizations that are parties to the proceeding must be represented by an attorney. Individuals may represent themselves.

(b) Any attorney representing a party to the proceeding must file a notice of appearance according to § 20.301(b) of this chapter.

(c) Each attorney must be in good standing and licensed to practice before a court of the United States or the highest court of any State, territory, or possession of the United States.

§ 148.246 When is a document considered filed and where should I file it?

(a) If a document to be filed is submitted by mail, it is considered filed on the date it is postmarked. If a document is submitted by hand delivery or electronically, it is considered filed on the date received by the clerk.

(b) File all documents and other materials related to an administrative proceeding at the U.S. Coast Guard Administrative Law Center, Attention:

Hearing Docket Clerk, room 412, 40 South Gay Street, Baltimore, MD, 21201-4022.

§ 148.248 What happens when a document does not contain all necessary information?

Any document that does not satisfy the requirements in §§ 20.303 and 20.304 of this chapter will be returned to the person who submitted it with a statement of the reasons for denial.

§ 148.250 Who must be served before a document is filed?

Before a document may be filed by any party, it first must be served upon:

- (a) All other parties; and
- (b) The Commandant (G-P).

§ 148.252 What is the procedure for serving a subpoena?

(a) A party may submit a request for a subpoena to the Administrative Law Judge (ALJ). The request must show the relevance and scope of the evidence sought.

(b) Requests should be submitted sufficiently in advance of the hearing so that exhibits and witnesses can be included in the lists required by § 20.601 of this chapter, but may be submitted later and before the end of the hearing, if good cause is shown for the late submission.

(c) A request for a subpoena must be submitted to the ALJ.

(d) A proposed subpoena, such as the form in <http://cgweb.comdt.uscg.mil/g-cj/subpoena.doc>, must be submitted with the request. If you do not use this form, the proposed subpoena must contain:

- (1) The docket number of the proceedings;
- (2) The captions “Department of Homeland Security,” “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 the address of the office of the ALJ;
- (4) For a subpoena giving testimony, a statement commanding the person to whom the subpoena is directed to attend the formal hearing and give testimony;

(5) For a subpoena producing documentary evidence, a statement commanding the person to produce designated documents, books, papers, or other tangible things at a designated time or place; and

(6) An explanation of the procedure in § 20.309(d) of this chapter and paragraph (h) of this section for quashing a subpoena.

(e) The procedure for serving a subpoena must follow Rule 45 of the Federal Rules of Civil Procedure, unless the ALJ authorizes another procedure.

(f) The witness fees for a subpoenaed witness are the same as the fees for witnesses subpoenaed in U.S. District Courts. The person requesting the subpoena must pay these fees.

(g) When serving a subpoena, a party must include witness fees in the form of a check to the individual or organization for one day plus mileage, or, in the case of a government-issued subpoena, a form SF-1157 so a witness may receive fees and mileage reimbursement.

(h) Any person served with a subpoena has 10 days from the time of service to move to quash the subpoena.

(i) If a person does not comply with a subpoena, the ALJ decides whether judicial enforcement of the subpoena is necessary. If the ALJ decides it is, the Commandant (G-P) reviews this decision.

§ 148.254 How is a hearing transcript prepared?

(a) Under the supervision of the Administrative Law Judge (ALJ), the reporter prepares a verbatim transcript of the hearing. Nothing may be deleted from the transcript, unless ordered by the ALJ and noted in the transcript.

(b) After a formal hearing is completed, the ALJ certifies and forwards the record, including the transcript, to the clerk to be placed into the docket.

(c) At any time within the 20 days after the record is docketed, the ALJ may make corrections to the certified transcript. When corrections are filed, they are attached as appendices.

(d) Any motion to correct the record must be submitted within 10 days after the record is docketed.