

collection requirements from the Office of Management and Budget ("OMB") and to give public notice of such approval.

**EFFECTIVE DATE:** December 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Moses, Supervising Financial Analyst, Registration and Disclosure Unit, or Jerry L. Langley, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, (202) 389-4651 or 389-4237.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1980 (44 U.S.C. 101 note) seeks, in part, to minimize the Federal paperwork burden and to improve Federal information policies and practices. The Act requires, among other things, that agencies obtain OMB review and clearance of certain recordkeeping and reporting requirements and to give public notice of the clearance number and expiration date.

OMB has reviewed and cleared the recordkeeping and reporting requirements for Parts 335 and 338 of FDIC's regulations. For the Part 335 requirements, the clearance number is 3064-0030 and the clearance expiration date is August 31, 1984. For the Part 338 requirements, the clearance number is 3064-0046 and the clearance expiration date is September 30, 1982. In accordance with OMB instructions, FDIC is amending § 335.101 entitled "Scope" to include the clearance information regarding Part 335 and amending § 338.4 entitled "Recordkeeping requirements" to include the clearance information on Part 338.

Since the changes are necessitated by statutory requirement and are informational in nature FDIC's Board of Directors has determined that notice of, and public participation in, this rulemaking is unnecessary and that good cause exists for waiver of the 30-day deferral of the effective date for the changes.

Accordingly, 12 CFR Parts 335 and 338 are amended as follows:

#### **PART 335—SECURITIES OF NONMEMBER INSURED BANKS**

(1) The authority citation for Part 335 reads as follows:

**Authority:** Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 781(i)).

##### **§ 335.101 [Amend]**

(2) In Part 335, § 335.101 is amended by adding a new sentence at the end which reads as follows:

\*\*\* The Office of Management and Budget has reviewed and approved the recordkeeping and reporting required by this part (OMB Control No. 3064-0030 which expires August 31, 1984).

#### **PART 338—FAIR HOUSING**

(3) The authority citation for Part 338 reads as follows:

**Authority:** Sec. 2, Pub. L. 86-671, 714 Stat. 547 (12 U.S.C. 1817); Sec. 8, Pub. L. 797, 64 Stat. 879, as amended by Sec. 202, 204, Pub. L. 89-695, 80 Stat. 1046, 1054, and Sec. 110, Pub. L. 93-495, 88 Stat. 1506 (12 U.S.C. 1818); Sec. 9, Pub. L. 797, 64 Stat. 881, as amended by Sec. 205, Pub. L. 89-695, 80 Stat. 1053, (12 U.S.C. 1920(b)); Sec. 805, Pub. L. 90-284, 82 Stat. 83-84, as amended by Sec. 808, Pub. L. 93-383, 88 Stat. 729 (42 U.S.C. 3605, 3608); Sec. 501, Pub. L. 93-495, 88 Stat. 15212 as amended by Sec. 2, Pub. L. 94-239, 90 Stat. 251 (15 U.S.C. 1691, et seq.); 40 FR 49306, (12 CFR Part 202; 37 FR 3429, 24 CFR Part 110).

(4) In part 338, § 338.4 is amended by adding a new paragraph (f) to read as follows:

##### **§ 338.4 Recordkeeping requirements.**

(f) *OMB review.* The Office of Management and Budget has reviewed and approved the recordkeeping and reporting required by this § 338.4 (OMB Control No. 3064-0046 which expires September 30, 1982.)

By Order of the Board of Directors,  
December 14, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 81-36235 Filed 12-17-81; 8:45 am]

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#### **SMALL BUSINESS ADMINISTRATION**

##### **13 CFR Part 123**

[Rev. 9, Amt. 18]

##### **Disaster Loans; Changes in Policy**

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises SBA's present home disaster loan regulations to prohibit the use of disaster loan funds to restore secondary homes and contents thereof and/or to repair or replace personal property used primarily for recreation or relaxation. As a result of this amendment only the primary residence of an applicant may be repaired or replaced with SBA funds.

In consideration of the need to utilize present and future disaster loan funds for only the most productive and effective uses, these rules become

effective December 18, 1981, for all disasters occurring on or after that date.

These changes will eliminate the use of funds to restore or repair property not necessary for an applicant's health, safety and welfare.

**EFFECTIVE DATE:** December 18, 1981.

**FOR FURTHER INFORMATION CONTACT:** Questions may be addressed to: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, [202] 653-6879.

**SUPPLEMENTARY INFORMATION:** The nation's present economic and fiscal condition dictates the most prudent utilization of both presently available disaster loan funds and future appropriations. By revoking eligibility of secondary homes and furniture, household appliances and other contents of such homes and of boats, vehicles and airplanes used primarily for recreation or relaxation, available funds will be applied to the relief of more serious needs.

After this amendment becomes effective SBA will continue to process applications to restore rental homes which constitute business property. Our guidelines for determining what is a rental home which constitutes business property will be based on those adopted by the Internal Revenue Service under § 280A of the Internal Revenue Code (26 U.S.C. 280A) for deduction of rental expenses (including depreciation) as business expenses. Applications to repair/replace recreational vehicles used for rental purposes will be similarly treated.

It is contemplated that the gross amount of disaster loan funds which will be made unavailable to the owners of secondary residences by virtue of this regulation will be made available to other eligible applicants for SBA disaster assistance. Therefore the economic impact of this regulation is insignificant—it merely establishes eligibility criteria for a government assistance program.

SBA avails itself of its authority pursuant to § 123.0(a) of its Disaster Loan regulation, 12 CFR 123.0(a), to change without advance notice certain regulations affecting disaster home loans. The Administrator has determined that the need to employ all presently available funds and future appropriations to assist the serious needs of eligible applicants presents a circumstance contemplated by 13 CFR 101.9 and 123.0(a), thus rendering impractical and contrary to the public interest any delay in the effectuation of these amendments. Therefore, SBA is



publishing the rule as a final rule at this time, and is not providing an opportunity for public comment.

For the purpose of Executive Order 12291, SBA hereby determines that this rule will not constitute a major rule. In addition, it is hereby certified pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that this rule will not have a significant economic impact on a substantial number of small entities. In this regard this rule governs only the applications of homeowners for SBA disaster assistance, and therefore does not impact upon small entities as defined in section 601 of that Act, 5 U.S.C. 601.

## PART 123—DISASTER LOANS

Accordingly, and pursuant to the authority of section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634(b)(5), Part 123, Chapter I of Title 13 of the Code of Federal Regulations is amended as follows:

### § 123.3 [Amended]

1. Section 123.3(a)(1) is revised to read as follows:

(a) Physical-loss disaster assistance.  
(1) The purpose of these loans is to restore a victim's primary residence (including a mobile home used as the primary residence of the applicant) or business property as nearly as possible to predisaster condition. Such business loans shall be made to the extent that the required financial assistance is not otherwise available from private sources, see § 120.2(a)(2) of this Chapter. A loan to an individual may be used to repair or replace damaged or lost furniture and other household belongings or personal effects, except for irreplaceable or extraordinarily expensive items. Funds may not be used to repair or replace vehicles (includes airplanes and boats) utilized primarily for recreation or relaxation by the owners thereof. Funds may be used to repair or replace destroyed or damaged inventory, machinery, or equipment. If the disaster victim elects to construct a new home or new business facilities on a different site, the loan may be used for such purpose. However, any such loan shall not exceed the estimated cost of restoring or replacing the damaged or destroyed property. SBA's lien position shall be at least as strong as it would have been if the victim had restored in the original location; and loans to relocate a one to four family residential structure will be subject to the Real Estate Settlement Procedures Act of 1974.

### § 123.5 [Amended]

2. Sections 123.5(c)(3)(iii) is removed in its entirety.

3. Sections 123.5(c)(3)(iv) through (vi) are hereby redesignated as § 123.5(c)(3)(iii) through (v), respectively. (Catalog of Federal Domestic Assistance Program No. 59.008 [Physical Disaster Loans])

Dated: November 19, 1981.

Michael Cardenas,

Administrator.

[FR Doc. 81-36205 Filed 12-17-81; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Parts 904, 922, 970, and 981

#### 50 CFR Parts 216, 218, 246, 285, and 621

### Civil Procedures; Interim Regulations

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Interim final regulations.

**SUMMARY:** NOAA is proposing a consolidation of its procedural regulations for assessing civil penalties under the statutes for which it has enforcement responsibility. The major statutes are the Magnuson Fishery Conservation and Management Act, the Marine Mammal Protection Act, the Endangered Species Act of 1973, and the Deep Seabed Hard Mineral Resources Act. These consolidated regulations replace numerous other sets of regulations.

**DATES:** These rules are effective December 18, 1981 as interim rules.

Comments must be submitted on or before January 18, 1982.

**ADDRESSES:** Interested persons are invited to submit written comments to the NOAA Office of General Counsel (GCEL), Room 275, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Powell or Amy Svoboda, 202-254-8350 [Address above.]

### SUPPLEMENTARY INFORMATION:

#### Classification

The National Oceanic and Atmospheric Administration (NOAA) has determined that these regulations are not major rules as defined by Executive Order 12291, "Federal Regulations". These regulations will not have a significant impact on a substantial number of small entities and

do not require preparation of a Regulatory Flexibility Analysis. These regulations do not affect the environment, and an environmental impact statement is not required under the National Environmental Policy Act of 1969. They also do not require information from 10 or more persons, and therefore the Paperwork Reduction Act does not apply.

### Discussion

#### Subpart B—Civil Penalties

These proposed regulations consolidate existing regulations that provide for assessment of civil penalties under statutes for which NOAA has enforcement responsibility. These statutes include the Magnuson Fishery Conservation and Management Act, the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, the Lacey Act, the Deep Seabed Hard Mineral Resources Act, the Ocean Thermal Energy Conversion Act of 1980, the Marine Protection, Research, and Sanctuaries Act of 1972, the Atlantic Tunas Convention Act of 1975, the Northern Pacific Halibut Act of 1937, the Tuna Conventions Act of 1950, and the North Pacific Fisheries Act.

The major change in the civil penalty process is extension of the Notice of Violation and Assessment (NOVA) system currently used under the Magnuson Fishery and Conservation Management Act to all civil penalty enforcement proceedings for other statutes covered by these regulations. The current system under statutes other than the Magnuson Fishery and Conservation Act requires a lengthy multi-stage process. An initial Notice of Violation, which proposes a penalty, is issued to an alleged violator. The respondent has varying periods of time to respond to the charges contained in the document. At the end of that time, the Agency may issue a Notice of Assessment which assesses a penalty. The respondent may then request a hearing. If no hearing is requested the assessment becomes final. The NOVA system employs a single charging document, which also assesses a penalty, and gives the respondent 30 days to respond. The timely preparation of two complex documents for each case under the present system has proved burdensome for the agency without adding to the due process protections afforded alleged violators. The availability of two response periods, and the demand on the NOAA resources required to react fully to them, have unduly lengthened the assessment process and substantially frustrated the



goal of prompt adjudication of alleged violations, contrary to efficient administration of an enforcement program and the best interests of the parties. A year's experience with NOVA under the Magnuson Fishery Conservation and Management Act has demonstrated its efficiency both from the viewpoint of the Agency and of persons being charged under the system. The Agency expects to obtain the same benefits by using the system for enforcement of other statutes.

#### *Subpart C—Hearing and Appeal Procedures*

These regulations replace numerous sets of regulations that provide for essentially similar hearing procedures for the statutes listed above under which NOAA assesses civil penalties. Most of the changes are technical affecting time periods and other minor provisions so as to make all procedures uniform.

The only significant changes are the addition of two provisions explicitly authorizing the Administrative Law Judge (Judge) to make a summary decision at any time during the proceeding disposing of all or part of the issues (Section 224), and enabling the Judge to make an oral decision in simple cases (Section 262(b)). This latter decision is to provide efficient disposition of cases involving few parties, limited issues and short hearings. It may be utilized only when the Judge has advised the parties in advance of the hearing.

Related to these civil procedures is the Equal Access to Justice Act, which provides for the award of attorneys fees and other expenses to parties who prevail over the federal government in certain administrative proceedings. Regulations implementing this Act will soon be published by the Department of Commerce.

#### **Effective Dates**

These rules are effective on December 18, 1981 as interim rules. Although we are requesting comment on the regulations and will review them in light of the comments, we are publishing them as final. A notice and comment period are not required for rules of agency procedure or practice. Because these rules simplify and consolidate existing rules, there is good cause for having them effective as soon as possible.

Subpart B of this part shall apply to any civil penalty proceeding initiated by Notice of Violation and Assessment after these become effective. Procedures initiated by a Notice of Violation or a Notice of Violation and Assessment

under regulations amended or repealed by these interim rules shall be governed by the former rules except as otherwise stipulated by the parties.

Dated: November 24, 1981.

Mirco P. Snidero,

*Deputy Assistant Administrator for Management and Budget.*

### **Title 15—Commerce and Foreign Trade**

1. 15 CFR Part 904 is amended by retitling the Part as "Civil Procedures", and redesignating the present Part 904 as Subpart G of the new Part 904, with the present section numbers of §§ 904.1 through 904.5 redesignated as §§ 904.600 through 904.604. The new Part 904 is further amended by adding the following new Subparts B and C to read as follows, and Subparts A, D, E, and F are reserved.

### **PART 904—CIVIL PROCEDURES**

#### **Subpart A—[Reserved]**

#### **Subpart B—Civil Penalties**

- Sec.
- 904.100 General.
  - 904.101 Notice of Violation and Assessment (NOVA).
  - 904.102 Procedures upon receipt of NOVA.
  - 904.103 Hearing and administrative review.
  - 904.104 Final administrative decision.
  - 904.105 Payment of final assessment.
  - 904.106 Compromise of civil penalty.
  - 904.107 Application of this subpart to permit holders and vessel owners.

**Authority:** Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Lacey Act, 18 U.S.C. 42-44, 3054; 3112; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401, et seq.; Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101, et seq.; Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434; Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j; Tuna Conventions Act of 1950, 16 U.S.C. 951-961; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021, et seq.

#### **Subpart C—Hearing and Appeal Procedures**

##### **General**

- Sec.
- 904.200 Scope and applicability.
  - 904.201 Definitions.
  - 904.202 Use of gender and number.
  - 904.203 Docket number.
  - 904.204 Notice of assignment.
  - 904.205 Appearances.
  - 904.206 Duties and power of Judge.
  - 904.207 Disqualification of Judge.
  - 904.208-904.219 [Reserved]

##### **Prehearing**

- 904.220 Pleadings, motions, and service.
- 904.221 Amendment of pleadings or records.

- 904.222 Time computation and extensions.
- 904.223 Expedition of proceedings.
- 904.224 Summary decision.
- 904.225 Failure to appear.
- 904.226 Dismissal for failure to prosecute or defend.
- 904.227 Settlements.
- 904.228 Stipulation.
- 904.229 Consolidation.
- 904.230 Prehearing conferences.
- 904.231-904.239 [Reserved]

##### **Discovery**

- 904.240 Discovery generally.
- 904.241 Depositions.
- 904.242 Interrogatories, requests for admission, and production of documents.
- 904.243 Subpoenas.
- 904.244-904.249 [Reserved]

##### **Hearings**

- 904.250 Notice of time and place.
- 904.251 Evidence.
- 904.252 Witnesses.
- 904.253 Interlocutory appeals.
- 904.254 Ex parte communications.
- 904.255-904.259 [Reserved]

##### **Post-Hearing**

- 904.260 Official transcript.
- 904.261 Petition for reconsideration.
- 904.262 Proposed findings and conclusions.
- 904.263 Documents, copies, and exhibits.
- 904.264-904.269 [Reserved]

##### **Decision**

- 904.270 Record of decision.
- 904.271 Decision.
- 904.272 Administrative review of decision.
- 904.273-904.299 [Reserved]

**Authority:** Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971, 89 Stat. 385; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401, 94 Stat. 553; Endangered Species Act of 1973, 16 U.S.C. 1531, 87 Stat. 884; Lacey Act, 18 U.S.C. 41-44, 62 Stat. 688; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801, 90 Stat. 331; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361, 86 Stat. 1027; Marine Protection, Research, and Sanctuaries Act of 1972, Title III, 16 U.S.C. 1431, 86 Stat. 1061; Northern Pacific Halibut Act of 1937, 16 U.S.C. 772, 50 Stat. 325; Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101, 94 Stat. 974; Tuna Conventions Act of 1950, 16 U.S.C. 951, 64 Stat. 777; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021 et seq.

#### **Subpart D—[Reserved]**

#### **Subpart E—[Reserved]**

#### **Subpart F—[Reserved]**

#### **Subpart G—Financial Compensation of Participants in Administrative Proceedings**

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### **Subpart B—Civil Penalties**

#### **§ 904.100 General.**

(a) *Purpose and Scope.* (1) The following statutes administered by NOAA authorize the Administrator to assess a civil penalty for each violation



against any person found to have committed an act prohibited by the statute or an implementing regulation (each day of a continuing violation is a separate offense):

- (i) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;
- (ii) Endangered Species Act of 1973, 16 U.S.C. 1531-1543;
- (iii) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;
- (iv) Lacey Act, 16 U.S.C. 42-44, 3054, 3112;
- (v) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401, et seq.;
- (vi) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101, et seq.;
- (vii) Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434;
- (viii) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g;
- (ix) Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j;
- (x) Tuna Conventions Act of 1950, 16 U.S.C. 951-961;
- (xi) North Pacific Fisheries Act, 16 U.S.C. 1021 et seq.

(2) This subpart provides uniform rules and procedures for assessing civil penalties under the statutes listed in paragraph (a)(1) of this section.

(b) *Filing and service of documents.*

(1) Whenever this Subpart requires service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served. Refusal by the person to be served, or his or her agency or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(2) Whenever this Subpart or an order issued hereunder requires a document or other paper to be filed within a certain period of time, such document will be considered filed as of the date of the postmark (or as otherwise shown for government-franked mail), if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods begin to run on the day following the date of the document, paper, or event which begins the time period and, unless otherwise provided by law or these regulations, includes the last day of the period, unless such day is a Saturday, Sunday, or Federal holiday, in which event it includes the next following day which is not a Saturday, Sunday, or Federal holiday. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this

Subpart to take place within a specified period of time.

(3) If an oral or written application is made to the Administrator within 10 days after the expiration of a time period established in this Subpart for the required filing of documents or other papers, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as specifically provided in this Part, or by order of an Administrative Law Judge under this Part, no requests for an extension of time may be granted.

(c) *Definitions.* Unless the context otherwise requires, terms in this Subpart have the meanings prescribed in the applicable statute or in Subpart A. In addition, the following definitions apply:

- (1) *Administrator*—means the Administrator of NOAA or a designee.
- (2) *Affected permit*—means a permit or license issued by NOAA under an applicable statute that may be subject to sanctions as a result of civil penalty proceedings under this Part.
- (3) *Affected vessel*—means any vessel that is liable *in rem* for any civil penalty proceedings under this Part, or whose permit may be subject to sanction as a result of civil penalty proceedings under this Part.
- (4) *Applicable statute*—means a statute listed in § 904.100(a), and its implementing regulations, under which a civil penalty is assessed, or proposed to be assessed.
- (5) *Final administrative decision*—means an order of the Administrator assessing a civil penalty which is not subject to further agency review under this Part, and which is subject to collection proceedings or judicial review in an appropriate federal district court as authorized by law.
- (6) *Permit*—means any license, permit, certificate or other approval issued by NOAA under an applicable statute.
- (d) *Exceptions.* Whenever a particular statute under which a penalty is assessed requires procedures different from the procedures in this Subpart, the alternative procedures for that statute are set forth in the last paragraph of the section of this subpart which is affected.

(4) *Applicable statute*—means a statute listed in § 904.100(a), and its implementing regulations, under which a civil penalty is assessed, or proposed to be assessed.

(5) *Final administrative decision*—means an order of the Administrator assessing a civil penalty which is not subject to further agency review under this Part, and which is subject to collection proceedings or judicial review in an appropriate federal district court as authorized by law.

(6) *Permit*—means any license, permit, certificate or other approval issued by NOAA under an applicable statute.

(d) *Exceptions.* Whenever a particular statute under which a penalty is assessed requires procedures different from the procedures in this Subpart, the alternative procedures for that statute are set forth in the last paragraph of the section of this subpart which is affected.

**§ 904.101 A Notice of Violation and Assessment (NOVA)**

(a) A notice of violation and assessment (NOVA) will be issued by the Administrator and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon the holder of an affected permit, or the owner of an

affected vessel, if the holder or owner is not the respondent. Although no specific form is prescribed, the NOVA will contain: (1) A concise statement of the facts believed to show a violation; (2) a specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated; (3) the findings and conclusions upon which the Administrator bases the proposed assessment; and (4) the amount of the civil penalty proposed to be assessed.

(b) In respect to the amount of civil penalty, the Administrator will take into account information available to the agency concerning any factor to be considered under the applicable statute, and any other matter that justice or the purposes of the statute require.

(c) The NOVA may also contain an initial proposal for compromise or settlement of the case. The Administrator may also attach documents which illuminate the facts believed to show a violation. The NOVA will advise of the respondent's rights at that point in the proceeding, and will be accompanied by a copy of the regulations in this Part governing civil procedures.

**§ 904.102 Procedures upon Receipt of NOVA.**

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

- (1) Accept the proposed penalty or compromise penalty, if any, by taking the actions specified in the NOVA;
- (2) Seek to have the NOVA amended or modified under paragraph (b) of this section;
- (3) Request a hearing under paragraph (e) of this section;
- (4) Request an extension of time to respond to the NOVA under paragraph (c) of this section; or
- (5) Take no action, in which case the NOVA becomes final in accordance with § 904.104. Options (2), (3), (4), and (5) may also be exercised by the holder of an affected permit or the owner of an affected vessel.

(b) The respondent, the permit holder, or the vessel owner may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying the Administrator at the telephone number or address specified in the NOVA. If amendment or modification is sought, the Administrator will either amend the NOVA or decline to amend it, and so notify the respondent, permit holder or vessel owner, as appropriate.



(c) The respondent, permit holder, or vessel owner may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. The Administrator may grant an extension of up to 30 days unless the Administrator determines that the requestor could, exercising reasonable diligence, respond within the 30-day period. If the Administrator does not respond to the request within 48 hours of its receipt by the Administrator, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48 hour period is considered effective response, and will be followed by written confirmation.

(d) The Administrator may, for good cause, grant an additional extension beyond the thirty day period specified in paragraph (c) of this section.

(e) If the respondent, the permit holder, or the vessel owner wishes a hearing, the request shall be dated and in writing, and shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NOVA. The request shall either attach a copy of the relevant NOVA or refer to the relevant NOAA case number.

(f) Any denial, in whole or in part, of any request under this section which is based upon untimeliness will be in writing.

(g) The Administrator may, in the Administrator's discretion, treat any communication from a respondent, a permit holder, or vessel owner as a request for a hearing under paragraph (e) of this section.

#### **§ 904.103 Hearing and administrative review.**

(a) Any hearing request under § 904.102(e) is governed by the hearing and review procedures in Subpart C.

(b) In any hearing held in response to a request under § 904.102(e), the Administrative Law Judge will render an initial decision. Any party to the hearing may seek the Administrator's review of the Judge's initial decision, subject to the provisions of Subpart C.

#### **§ 904.104 Final administrative decision.**

(a) If no request for hearing is filed as provided in § 904.102(e), the NOVA becomes effective as the final administrative decision and order of the Administrator on the 30th day after service of the NOVA, or on the last day of any delay period granted.

(b) If a request for hearing is filed in accordance with § 904.102(e), the date of the final administrative decision is as provided in Subpart C.

#### **§ 904.105 Payment of final assessment.**

(a) Respondent shall make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of the Administrator under § 904.104 or Subpart C, or, if the respondent initiates judicial review of the assessment in accordance with the applicable statute during the 30 day period, within 10 days after the appropriate court enters final judgment in favor of the Administrator, unless the court's order provides otherwise. Payment shall be made by mailing or delivering to the Administrator at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States."

(b) Upon any failure to pay the civil penalty assessed, the Administrator may request the Attorney General of the United States to recover the amount assessed in any appropriate district court of the United States, or may act under § 904.106.

#### **§ 904.106 Compromise of civil penalty.**

(a) The Administrator, in the Administrator's sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed, or which is subject to imposition, except as stated in paragraph (e) of this section.

(b) The compromise authority of the Administrator under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of the Administrator or in response to a request of the alleged violator or other interested person.

(c) If the Administrator acts under this section prior to issuing a NOVA or after a final assessment is payable under § 904.105, the Administrator will prepare a document indicating the action taken and citing this paragraph and the applicable statutory provision as authority. Once the case has been assigned for hearing under Subpart C, the Administrator will, except in unusual circumstances, defer any compromise action under this section until the Administrative Law Judge has rendered an initial decision in the matter. Neither the existence of the compromise authority of the Administrator under this section nor the Administrator's exercise thereof at any time changes the date upon which an assessment is final or payable.

(d) If compromise action is requested or otherwise becomes appropriate for the Administrator's consideration during the pendency of a petition for relief from

forfeiture filed under Subpart F, the Administrator may consolidate, in a manner consistent with the provisions of any statute or regulation applicable to the forfeiture, consideration of the two matters.

(e) Exception: The Administrator will not compromise, modify, or remit a civil penalty imposed, or subject to imposition, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the penalty is pending in a court of the United States.

#### **§ 904.107 Application of this subpart to permit holders and vessel owners.**

(a) This Subpart applies to holders of the affected permits as defined in § 904.100(c)(2).

(b) This Subpart also applies to owners of affected vessels as defined in § 904.100(c)(3).

### **Subpart C—Hearing and Appeal Procedures**

#### **General**

#### **§ 904.200 Scope and applicability.**

(a) These Rules establish uniform procedures for the conduct of hearings and the issuance of initial, recommended, and final decisions of the National Oceanic and Atmospheric Administration (NOAA) in cases involving alleged violations of the laws listed above and regulations implementing these Acts, including civil penalty assessments and permit sanctions. By separate regulation, these rules may be applied to proceedings which do not involve alleged violations of law. These rules shall govern proceedings for which no other rules of practice have been promulgated. By delegation from the Secretary of Commerce or the statute itself, the Administrator of NOAA has authority to carry out the provisions of the Acts and is authorized further to delegate these authorities. These rules are an exercise of that authority.

(b) Subject to the administrative direction of the Chief Administrative Law Judge, each Administrative Law Judge (Judge) assigned by the Chief Administrative Law Judge is delegated authority to make the initial, recommended, or final decision of the agency (whichever is made appropriate by regulation outside this subpart) 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 these Rules, except that no Administrative Law Judge has authority to rule on challenges to the validity of regulations promulgated by the agency.



(c) The Rules in this subpart will not serve as an independent basis for claiming the right to a hearing, but instead prescribe procedures for the conduct of hearings, the right to which is provided by other authority, including other subparts in this Part.

#### § 904.201 Definitions.

"Administrator"—means the Administrator of NOAA or a designee.

"Affected licensee"—means the holder of a license or permit issued by the agency which may be subject to sanctions by the agency as a result of proceedings under this subpart.

"Affected vessel"—means a vessel whose agency-issued permit may be subject to sanctions by the agency as a result of proceedings under this subpart, or would be liable *in rem* for a civil penalty assessed under this subpart.

"Initial decision"—means a decision of the Administrative Law Judge which, under applicable statute and regulation, is subject to review by the Administrator, but which becomes the final agency decision in the absence of such review.

"Final decision"—when used in reference to an Administrative Law Judge decision, means a decision of the Administrative Law Judge which, under applicable statute and regulation, is the final agency decision and is not subject to review by the Administrator.

"Recommended decision"—means a decision of the Administrative Law Judge which, under applicable statute and regulation, is a recommendation considered by the Administrator in reaching a final agency decision, but which does not itself become the final agency decision.

"Agency"—means NOAA.

"Decision"—means an initial, recommended, or final decision of the Administrative Law Judge.

#### § 904.202 Use of gender and number.

Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender include the feminine gender and the feminine the masculine.

#### § 904.203 Docket number.

Each request for hearing promptly upon its receipt for filing in the Office of Administrative Law Judges will be assigned a docket number and thereafter the proceeding shall be referred to by such number.

#### § 904.204 Notice of assignment.

Written notice of the assignment of hearing to the Judge will promptly be

given to the parties and thereafter all pleadings, papers, and other documents in the proceeding shall be filed directly with the Judge with copies served on the opposing party.

#### § 904.205 Appearances.

A party may appear in person or by or with counsel or other qualified representative.

#### § 904.206 Duties and powers of Judge.

(a) The Judge shall have all powers and responsibilities necessary to preside over the parties and the proceeding, to hold prehearing conferences, to conduct the hearing, and to make the decision in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to:

(1) Rule on a request to participate as a party in the proceeding by allowing, denying, or limiting such participation; provided, however, that the respondent, agency counsel, and if they enter an appearance, the owner of an affected vessel and the holder of an affected license, shall be parties, and provided further that the Judge shall prior to ruling ascertain the views of other parties and base the ruling on whether the request is from a person who could be directly and adversely affected by the decision and who may contribute materially to the disposition of the proceedings;

(2) Schedule the time and place and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(3) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to close the hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness refusing to answer a question ruled to be proper;

(4) Administer oaths and affirmations to witnesses;

(5) Rule on discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.240;

(6) Rule on motions, procedural requests, and similar matters;

(7) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(8) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(9) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon a failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(10) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(11) Take official notice of any matter not appearing in evidence which is among traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; provided, that the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(12) Prepare and submit a decision or other appropriate disposition document and certify the record;

(13) Award attorney fees and expenses as provided in Subpart D; and

(14) Grant preliminary or interim relief.

#### § 904.207 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from a particular case when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification shall file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the Judge shall rule on the matter. If the Judge believes himself/herself not disqualified, and so rules, the Judge shall also cause all matters relating to such claims of disqualification affirmatively to appear in the record.



**§§ 904.208-904.219 [Reserved]****Prehearing****§ 904.220 Pleadings, motions, and service.**

(a) An original and one copy of all pleadings and documents shall be filed with the Office of Administrative Law Judges and a copy shall be served upon each party of record. All pleadings or documents when submitted for filing shall show that service has been made upon all parties. Such service shall be made by delivering one copy to each party in person or by mailing to the last known address by first-class mail properly addressed with postage prepaid.

(b) All papers to be filed under the Rules in this Subpart may be reproduced by printing or any other process, provided the copies are clear and legible, shall be dated, the original signed in ink, and shall show the docket description and title of the proceeding, and the title, if any, and address of the signatory. If typewritten, the impression shall be on only one side of the paper and shall be double spaced, pica type, if possible, except that quotations shall be single spaced and indented.

(c) Any documents filed shall be signed: (1) By the person or persons filing the same, (2) by an officer thereof if a corporation, (3) by an officer or employee if a government instrumentality, or (4) by an attorney or other person having authority to sign.

(d) The date of service of pleadings or documents shall, unless otherwise specified, be the day when the material is deposited in the United States mail, shown by the postmark thereon (or as otherwise shown for government-franked mailings) or is delivered in person, as the case may be.

(e) Motions shall normally be made in writing and shall state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(f) Unless otherwise provided, the answer to any written motion, pleading, or petition shall be served within 15 days after date of service thereof. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 15-day period. Answers shall be in writing, unless made in response to an oral motion made at a hearing, shall be so drawn as fully and completely to advise the parties and the Judge concerning the nature of the opposition, shall admit or deny specifically and in detail each material allegation of the pleading

answered, and shall state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer shall be deemed controverted.

(g) A response to an answer will be called a reply. A short reply restricted to new matters may be served within 10 days of service of an answer. The Judge, in his/her discretion, may dispense with the reply. No further responses are permitted.

**§ 904.221 Amendment of pleadings or record.**

The Judge, upon his/her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading. In his/her discretion, the Judge may permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected by deletion or substitution of words or figures and broad discretion shall be exercised by the Judge in permitting such corrections.

**§ 904.222 Time computation and extensions.**

(a) If appropriate and justified, the Judge may grant an extension of time. Requests for extensions of time shall, except in extraordinary circumstances, be made in writing.

(b) Saturdays, Sundays, and Federal holidays will be included in computing the time allowed for service of any document or paper, except that when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next business day.

(c) Time periods will begin on the day following the date of the document, paper, or event which starts the time period.

**§ 904.223 Expedition of proceedings.**

(a) In the interests of justice and administrative efficiency, the Judge on his/her own initiative may expedite the proceeding.

(b) Additionally, a motion of a party to expedite the proceeding may, in the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. If a motion for an expedited hearing is granted, the hearing on the merits shall not be scheduled within less than three days notice, unless all parties consent to an earlier hearing.

**§ 904.224 Summary decision.**

(a) At any time after commencement of a proceeding and before the scheduling of a hearing on the merits, or such later time as permitted by the Judge, a party or the Judge on his/her own motion may move for a summary

decision disposing of all or part of the issues.

(b) A summary decision may be rendered if the entire record shows as to the issue or issues under consideration: (1) That there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.

**§ 904.225 Failure to appear.**

(a) If a party fails to appear after service of notice proper under these rules, the hearing may proceed. A notation of failure to appear will be made in the record, and the hearing may be conducted with the parties then present, or the matter may be terminated if the Judge determines that proceeding with the hearing will not aid the decisional process.

(b) The Judge shall also cause to be placed in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(c) Failure of a party to appear after proper notice will be deemed a waiver of any right to a hearing and consent to the making of a decision on the record.

**§ 904.226 Dismissal for failure to prosecute or defend.**

Whenever the record discloses the failure of either party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of either party not to participate further in the proceeding, the Judge may issue an order to show cause why the case should not be dismissed or disposed of adversely to that party's interest, or make such order as is necessary for the just and expeditious resolution of the case, including dismissal of the matter from the docket for failure to prosecute or defend. Such dismissal or other order shall be subject to § 904.272.

**§ 904.227 Settlements.**

If settlement is reached before the Judge has certified the record, the Judge in his/her discretion may require the submission of a copy of the agreement to assure the Judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

**§ 904.228 Stipulation.**

The parties may, by stipulation, agree upon any facts involved in the proceeding and include them in the record with the consent of the Judge. Written stipulations shall be signed and shall be served upon all parties of record within the time period specified by the Judge.



**§ 904.229 Consolidation.**

The Judge may order two or more proceedings which involve substantially the same parties or the same issues consolidated and heard together.

**§ 904.230 Prehearing conferences.**

(a) Prior to any hearing or at other times deemed appropriate, the Judge may, upon his/her own initiative, or upon the application of any party, arrange a telephone conference and where appropriate, record such telephone conference, or direct the parties to appear before him/her for a conference to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the hearing;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing;

(7) Such other matters as may aid in the disposition of the proceeding.

(b) The Judge in his/her discretion may issue an order showing the matters disposed of by Order or Agreement in such conference.

**§§ 904.231-904.239 [Reserved]****Discovery****§ 904.240 Discovery generally.**

(a) Parties may obtain discovery of any relevant matter, not privileged, that is admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. In connection with any deposition or other discovery procedure which the parties cannot voluntarily resolve, the Judge may make any order required to compel proper discovery, to protect a party or person from harassment, undue burden or expense, or to preserve confidentiality where requested or in the Judge's discretion.

(b) Any orders concerning discovery may include limitations on the scope, method, time, and place for same, and upon request, or within the Judge's discretion, an appropriate protective order.

(c) If a party fails to comply with a subpoena or order, including, but not

limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories or requests for admissions, the Judge may, for the purpose of permitting resolution of relevant issues and disposition of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the proceeding, the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the party, or both.

**§ 904.241 Depositions.**

(a) Any party desiring to take the deposition of a witness shall serve written notice on the other parties and the witness setting forth the time when, the place where, and the name and mailing address of the person before whom the deposition is to be taken; the name and address of each witness to appear for deposition; and the subject matter concerning which each witness is expected to testify.

(b) Depositions may be taken orally before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held or before a person appointed by the Judge.

(c) Notice shall be given not less than five days before the deposition is to be taken if within the United States and not less than 20 days in advance when the deposition is to be taken elsewhere, unless the Judge by order specifies a different time or excuses the witness from appearing for good cause shown.

(d) Each witness testifying upon deposition shall be sworn and any party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all

objections made, shall be reduced to writing, read to the witness, signed by the witness unless waived, and certified by the officer before whom the deposition is taken. All transcription costs associated with the testimony of a deposed witness are to be borne by the party seeking the deposition. Copies of the transcripts shall be made available to any party upon payment of the fee provided in the agreement with the reporter. See also § 904.252(d).

(e) Subject to such objections to the questions and answers as were noted at the time of taking the deposition (or, if reserved, as made at the hearing) which would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by any party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

**§ 904.242 Interrogatories, requests for admissions, and production of documents.**

Any party may serve written interrogatories or a request for admission of facts upon another party. A party served with written interrogatories or a request for admissions shall answer such interrogatories or requests within 15 days of service, unless the Judge by order specifies a different time or excuses the party from answering for good cause shown. Interrogatories shall be answered under oath.

**§ 904.243 Subpoenas.**

(a) The attendance and testimony of witnesses and the production of documentary evidence at any designated place of hearing on behalf of any party to the proceeding may be required by subpoena as authorized by the statute under which the proceeding is conducted. Subpoenas shall be issued upon a reasonable showing by the applicant of the grounds and necessity thereof. With respect to subpoenas for the production of documents, the request shall also show their competency, relevancy, and materiality. All requests for subpoenas shall be in writing, unless waived for good cause shown. Except for good cause shown, requests for subpoenas shall be submitted by the applicant at least 10 days prior to the date set for hearing.

(b) Any person served with a subpoena may move within 10 days of service, or at hearing, whichever is sooner, to quash or modify the subpoena. The subpoena will be quashed or modified if it is beyond the scope of discovery; does not describe



with sufficient particularity the evidence required to be produced; or is for any other reason insufficient in law, or the subpoena is found to be invalid or unreasonable. Any ruling quashing or modifying a subpoena will state the grounds for such action.

(c) Upon the failure of any person to comply with an order to testify or a subpoena directed or issued, the party requesting the order or subpoena may apply to the appropriate district court for enforcement of the order or subpoena.

(d) A subpoena for the attendance of an Agency employee or for the production of Agency evidence shall be served upon the Agency counsel. Agency counsel may file a motion to quash the subpoena within 10 days of service of the subpoena and prohibit such attendance or production until such time as the Judge rules on the motion to quash.

#### §§ 904.244-904.249 [Reserved]

#### Hearings

##### § 904.250 Notice of time and place.

(a) The Judge shall promptly cause to be served on the parties notice of the time and place of hearing, and the hearing will not, except in extraordinary circumstances, be held less than 10 days after service of the notice of hearing.

(b) Unless otherwise required by the statute involved, the hearing will not necessarily be scheduled to take place where the respondent resides; however, if practicable, an attempt will be made to schedule the hearing within a reasonable proximity of where the respondent resides.

(c) The Judge may order that all or part of a proceeding be heard on submissions or affidavits if it appears that substantially all important issues of material fact may be resolved by means of written materials and that efficient disposition of the proceeding can be made without oral hearing.

##### § 904.251 Evidence.

(a) At the hearing, every party shall have the right to present oral or documentary evidence in support of his/her case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. This paragraph shall not be interpreted to diminish the powers and duties of the Judge under this subpart.

(b) All evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible at the hearing, except that formal rules of evidence shall not necessarily apply to the

proceedings; and hearsay evidence shall not be inadmissible as such.

(c) Formal exceptions to the rulings of the Judge are unnecessary. It is sufficient that a party, at the time of the ruling, makes known the action which he/she desires the Judge to take or his/her objection to an action taken, and the grounds therefor. Rulings on each objection shall appear in the record.

##### § 904.252 Witnesses.

(a) In any case involving a charged violation of law in which the party charged has admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(b) Any witness not a party may have personal counsel to advise him/her as to his/her rights but such counsel may not otherwise participate in the hearing.

(c) If such procedure is requested by either party, or upon the Judge's own initiative, witnesses who are not parties may be excluded from the hearing room prior to taking of their testimony.

(d) Witnesses subpoenaed under these Rules, including § 904.243, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

(e) If a witness is expected to testify in a language other than the English language, the party sponsoring the witness shall provide for the services of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent interpreters are to be used. Provisions shall also be made to have any exhibits in a foreign language translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits shall be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

##### § 904.253 Interlocutory appeals.

(a) At the request of a party or on the Judge's own initiative, the Judge may certify to the Administrator authority for review a ruling which does not finally dispose of the proceeding if the Judge determines that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the Judge of the interlocutory ruling for review, the Administrator shall expeditiously decide the matter. The parties shall have

10 days to serve any briefs associated with the certification.

(c) No interlocutory appeal shall lie as to any ruling not certified by the Judge.

##### § 904.254 Ex parte communications.

(a) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include requests for status reports.

(b) Except to the extent required for disposition of ex parte matters as authorized by law, upon assignment of a matter to the Judge and until the final decision of the Agency is effective under these regulations, no ex parte communication relevant to the merits of the proceeding shall be made, or knowingly caused to be made:

(1) By the Judge or by an Agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce; or

(2) By an interested person outside the Department of Commerce to the Judge or to any Agency employee involved in the decisional process of the proceeding.

(c) An Agency employee or Judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the Judge, or Administrator as appropriate, may take action in this respect consistent with these Rules, the applicable statute, and 5 U.S.C. 556(d) and 557(d).

(d) Paragraphs (b) and (c) of this section do not apply to communications to or from the Agency counsel; however, the Agency counsel may not participate or advise in the decision of the Judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with this subpart. In addition, the Judge may not consult any person or party on a fact in issue unless notice and opportunity for all parties to participate is provided.

(e)(1) Paragraphs (b) and (c) of this section do not apply to communications concerning national defense or foreign policy matters. Such ex parte communications—

(i) On national defense or foreign policy matters to or from an Agency employee or

(ii) From employees of the United States Government involving intergovernmental negotiations are permitted if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.



(2) Ex parte communication subject to paragraph (e) of this section shall be made a part of the record to the extent that they do not include information classified pursuant to an Executive Order. Classified information shall be included in a classified portion of the record which shall be available for review only in accordance with applicable law.

#### §§ 904.255-904.259 [Reserved]

#### Post-Hearing

##### § 904.260 Official transcript.

(a) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any proceeding and will be supplied to the parties upon the payment of fees at the rate provided in the agreement with the reporter.

(b) The Judge may determine whether "ordinary copy," "daily copy," or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

##### § 904.261 Petition for reconsideration.

Unless an order of the judge specifically provides otherwise, any party may file a petition for reconsideration of an order or decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided and the alleged errors or relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of final orders. Neither the filing nor the granting of a petition for reconsideration shall operate as a stay of an order or its effectiveness date (including for purposes of § 904.272) unless specifically so ordered by the Judge. Within 10 days after the petition is filed, any party to the proceeding may file an answer in support or in opposition. The Judge may in his/her discretion reopen the hearing to consider matters raised in a petition which could not reasonably have been foreseen prior to issuance of the order or decision.

##### §§ 904.262 Proposed findings and conclusions.

(a) Unless a different schedule is established in the discretion of the Judge, including the procedure of paragraph (b) of this section, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days after the Judge closes the hearing. Reply briefs may be submitted within 15 days after service of the proposed

findings and conclusions to which they respond, unless the Judge sets a different schedule.

(b) In cases involving few parties, limited issues, and short hearings, the Judge may require that any proposed findings and conclusions and reasons in support, be presented orally at the close of the hearing. In such case, the Judge will advise the parties in advance of hearing.

##### § 904.263 Documents, copies and exhibits.

(a) When documents have been received in evidence, a true copy thereof, or of such part as may be material or relevant, may be submitted in lieu of the original during the hearing or at its conclusion. After a decision has become final, the Judge may, in his/her discretion, and after notice to other parties, permit the withdrawal of original exhibits or any part thereof by the party entitled thereto for the purpose of substituting copies. The substitution of true copies of exhibits, or any part thereof, may be required by the Judge in his/her discretion as a condition of granting permission for withdrawal of the original.

(b) Photographs may be substituted for physical evidence in the discretion of the Judge, before or after decision.

#### § 904.264-904.269 [Reserved]

#### Decision

##### § 904.270 Record of decision.

(a) The official transcript of testimony and proceedings, exhibits, briefs, requests, and other documents filed or officially noticed in the proceeding, together with all rulings of the Judge thereon, shall constitute the exclusive record for decision. The record shall also be accompanied by any rejected exhibits, being specifically so marked, and any record of *ex parte* communications, also specifically so marked.

(b) The Chief Administrative Law Judge shall arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

##### § 904.271 Decision.

(a) After expiration of the period provided in § 904.262 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge shall render a written decision upon the record in the case, setting forth:

(1) Findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and the ruling

on any findings or conclusions presented by the parties;

(2) A statement of any facts noticed or relied upon in the decision, if the parties have not previously been advised of such notice; and

(3) Such other matters as the Judge considers appropriate.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written decision under paragraph (a) of this section. The Judge may in such case direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge may, after submission of briefs, direct the prevailing party to prepare proposed findings, conclusions, and an order within a time frame prescribed by the Judge.

(d) The Judge shall transmit the written decision to each of the parties by registered or certified mail, return receipt requested, and shall promptly certify to the Administrator the record, including the original copy of the decision, as complete and accurate, except in such particulars as are specified.

##### § 904.272 Administrative review of decision.

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the Judge within 30 days after the date the decision is served.

(b) Review of an initial decision is not a matter of right, but rests with the sound discretion of the Administrator. Unless a petition for discretionary review is filed or the Administrator issues an order to review upon his/her own initiative, an initial decision will become effective as the final decision of the Administrator 30 days after service, unless otherwise provided by statute or regulations. Such petition shall be accomplished by proof of service upon all parties. If a party files a timely petition for discretionary review within that 30 day period, or action to review is taken by the Administrator upon his/her own initiative, the effectiveness of the decision is stayed until further order of the Administrator.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or precedent;



(3) A substantial and important question of law, policy, or discretion is involved; or

(4) A prejudicial procedural error has occurred.

(d) Each issue shall be separately numbered and concisely stated. Each issue shall be supported by detailed citations of the record, and by statutes, regulations, or principal authorities relied upon. Matters of fact or law not argued before the Judge may not be raised on review unless they were raised for the first time in the initial decision of the Judge, or could not reasonably have been foreseen and raised by the parties during the hearing.

(e) No oral argument on petitions for discretionary review will be permitted.

(f) Within 21 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies shall be permitted.

(g) The Administrator's decision declining to exercise discretionary review will specify the date upon which the Judge's decision shall become effective as the final decision of the Administrator. Reasons for the Administrator's decision need not be stated unless he/she wishes to state a different reason than those of the Judge. To the extent the Administrator's decision is silent as to any material issue of fact, law, or discretion presented by the record, the decision is deemed to adopt the findings, conclusions, and reasons in the initial decision. A petition for reconsideration of an Administrator's decision declining review will not be permitted.

(h) The Administrator may review the record and issue a final order without further proceedings on any or all the issues where he/she finds that matters raised do not warrant further proceedings. If the Administrator desires further proceedings, he/she will issue an order for review limiting the issues for review and the procedures to be followed. Such issues may constitute one or more of the issues raised in a petition for discretionary review and/or matters which the Administrator desires to review on his/her own initiative. Only those issues specified in the order shall be argued on brief to the Administrator and considered by the Administrator.

§§ 904.273-904.299 [Reserved]

#### Subpart D [Reserved]

#### Subpart E [Reserved]

#### Subpart F [Reserved]

#### Subpart G—Financial Compensation of Participants in Administrative Proceedings

\* \* \* \* \*

#### PART 922—MARINE SANCTUARIES

2. Part 922 of 15 CFR is amended by removing §§ 922.31, 922.32, and 922.33 of Subpart D.

§§ 922.31, 922.32, and 922.33 [Removed].

#### PART 970—DEEP SEABED MINING REGULATIONS AFFECTING PRE-ENACTMENT EXPLORERS

3. 15 CFR 970.1101 is revised to read as follows:

##### § 970.1101 Assessment procedure.

Subpart B of 15 CFR Part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

4. 15 CFR 970.1102 is revised to read as follows:

##### § 970.1102 Hearing and appeal procedures.

Subpart C of 15 CFR Part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

5. 15 CFR 970.1103(g) is revised to read as follows:

##### § 970.1103 License sanctions.

\* \* \* \* \*

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section by forwarding the request, a copy of the NOS and any response thereto to the NOAA Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the respondent, the affected licensee, and the owner of an affected vessel (if the licensee or owner is not the respondent), with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleadings and other documents shall be filed directly with the NOAA Office of Administrative Law Judges, and a copy

shall be served on the opposing party (respondent or agency representative).

(2) The hearing and appeal procedures in 15 CFR Part 904 Subpart C to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the Administrative Law Judge orders differently.

#### PART 981—OCEAN THERMAL ENERGY CONVERSION LICENSING PROGRAM

6. 15 CFR 981.590 is revised to read:

##### § 981.590 Assessment procedure.

Subpart B of 15 CFR Part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

7. 15 CFR 981.600 is revised to read as follows:

##### § 981.600 Hearing and appeal procedures.

Subpart C of 15 CFR Part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

#### Title 50—Wildlife and Fisheries

#### PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

§§ 216.62 through 216.65 [Redesignated as §§ 216.5 through 216.8]

1. In Title 50, §§ 216.62 through 216.65 of Subpart F are redesignated as §§ 216.5 through 216.8 of Subpart A.

#### Subpart F—[Reserved]

§§ 216.51 through 216.61 [Removed]

2. Sections 216.51 through 216.61 are removed, and Subpart F is reserved.

#### PART 218—[REMOVED]

3. Part 218 is removed.

#### PART 246—TRANSPORTATION OF WILDLIFE

§§ 246.6 through 246.16 [Removed]

4. Sections 246.6 through 246.16 are removed.

#### PART 285—ATLANTIC TUNA FISHERIES

5. In 50 CFR Part 285, § 285.6 is amended by revising paragraph (a) to read as follows:



**§ 285.6 Civil procedures.**

(a) Subparts B and C of 15 CFR Part 904 shall govern the assessment of civil penalties for violation of the Act and these regulations.

**PART 621—CIVIL PROCEDURES****Subpart B—[Reserved]****§§ 621.21 through 621.26 [Removed]**

6. Subpart B, consisting of §§ 621.21 through 621.26, is removed and the subpart is reserved.

**Subpart C—[Reserved]****§§ 621.31 through 621.42 [Removed]**

7. Subpart C, consisting of §§ 621.31 through 621.42, is removed and the subpart is reserved.

[FR Doc. 81-34431 Filed 12-17-81; 8:45 am]

BILLING CODE 3510-22-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Part 520****Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Citrate Tablets**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Med-Tech, Inc., providing for safe and effective use of diethylcarbamazine citrate tablets for prevention of heartworm disease in dogs, control of ascarid infections in dogs, and treatment of ascarid infections in dogs and cats.

**EFFECTIVE DATE:** December 18, 1981.

**FOR FURTHER INFORMATION CONTACT:** Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

**SUPPLEMENTARY INFORMATION:** Med-Tech, Inc., P.O. Box 338, Elwood, KS 66024, filed an NADA (127-627) providing for use of 50, 100, 200, 300, and 400 milligram (mg) diethylcarbamazine citrate tablets for prevention of heartworm disease in dogs caused by *Dirofilaria immitis*, as an aid in the treatment and control of ascarid infections in dogs caused by *Toxocara canis*, and as an aid in the treatment of ascarid infections in cats caused by *Toxocara canis* and *Toxascaris leonina*.

The product is similar to another tablet that was the subject of a National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) notice which was published in the Federal Register of January 8, 1969 (34 FR 275). The NAS/NAR notice stated, and the agency concurred, that the drug is effective as an aid in the treatment of ascarid infections in dogs and cats when administered at 25 to 50 mgs per pound of body weight as a single dose with a repeat dose given after 10 to 20 days. Sponsors of NADA's for products which did not reflect the conclusions of the notice were required to update their applications by submitting revised labeling or adequate documentation to support the labeling used. Those sponsors whose NADA's satisfied the requirements of the NAS/NRC notice or were found equivalent to the NAS/NRC-reviewed products are codified in the regulations in 21 CFR 520.620 and 520.622.

A NAS/NRC DESI notice for diethylcarbamazine medicated premix was published in the Federal Register of June 16, 1970 (35 FR 9869). The review concluded that the product is probably effective as an aid in the prevention and elimination of large roundworms in dogs when given as directed in feeds. The agency upon review of additional data concluded that the product is effective for use in prevention of ascarid infections.

Med-Tech, Inc., submitted data from a controlled artificial challenge study and reports from published scientific literature to demonstrate that its product is safe and effective for the prevention of heartworm disease caused by *Dirofilaria immitis* in dogs. The agency granted a waiver from the requirements of 21 CFR 514.111(a)(5)(ii) for a second adequate and well-controlled study, based on the literature. The ascarid claims are approved on the basis of the NAS/NRC reviews. The NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a

type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

**PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 520.622a is amended by adding new paragraph (a)(6) to read as follows:

**§ 520.622a Diethylcarbamazine citrate tablets.**

(a) \* \* \*

(6) See No. 013983 in § 510.600(c) of this chapter for use of 50, 100, 200, 300, or 400 milligram tablets for prevention of heartworm disease in dogs, as an aid in the control of ascarid infections in dogs, and as an aid in the treatment of ascarid infections in dogs and cats.

**Effective date.** This amendment is effective December 18, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 10, 1981.

**Terence Harvey,**  
Deputy Director, Bureau of Veterinary Medicine.

[FR Doc. 81-36027 Filed 12-17-81; 8:45 am]

BILLING CODE 4160-01-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[A-5-FRL 1997-6]

**Approval and Promulgation of State Implementation Plans; Ohio**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On June 15, 1981, the State of Ohio submitted a revision to the ozone (O<sub>3</sub>) portion of its State Implementation Plan (SIP). This revision is in the form of four permits and two variances submitted for six sources located at the