

their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Judge will expedite any hearing requested under §904.304.

### Subpart E—Written Warnings

#### § 904.400 Purpose and scope.

This subpart sets forth the policy and procedures governing the issuance and use of written warnings by persons authorized to enforce the statutes administered by NOAA, and the review of such warnings. A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the laws cited in §904.1(c).

#### § 904.401 Written warning as a prior violation.

A written warning may be used as a basis for dealing more severely with a subsequent violation, including, but not limited to, a violation of the same statute or a violation involving an activity that is related to the prior violation.

#### § 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in §904.1(c) or Agency counsel may issue a written warning to a respondent as provided in §904.3.

(b) The written warning will:

- (1) State that it is a "written warning";
- (2) State the factual and statutory or regulatory basis for its issuance;

(3) Advise the respondent of its effect in the event of a future violation; and

(4) Inform the respondent of the right of review and appeal under §904.403.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the respondent previously committed a similar violation for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other administrative or judicial proceedings.

#### § 904.403 Review and appeal of a written warning.

(a) If a respondent receives a written warning from an authorized officer, the respondent may seek review by Agency counsel. The request for review must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning. The request for review must be filed at the NOAA Office of the Assistant General Counsel for Enforcement and Litigation, 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910, within 60 days of receipt of the written warning. Agency counsel may, in his or her discretion, affirm, vacate, or modify the written warning and will notify the respondent of his or her determination. The Agency counsel's determination constitutes the final agency action, unless it is appealed pursuant to paragraph (b) of this section.

(b) If a respondent receives a written warning from Agency counsel, or receives a determination from Agency counsel affirming a written warning issued by an authorized officer, the respondent may appeal to the NOAA Deputy General Counsel. The appeal must be filed at the NOAA Office of the General Counsel, Herbert Hoover Office Building, 14th & Constitution Avenue, NW., Washington, DC 20230, within 60 days of receipt of the written warning issued by Agency counsel, or the determination from Agency counsel affirming a written warning issued by an authorized officer.