§ 904.201 Hearing requests and case docketing.

(a) If the respondent wishes a hearing on a NOVA, NOPS or NIDP, the request must be dated and in writing, and must be served either in person or mailed to the Agency counsel specified in the notice. The respondent must either attach a copy of the NOVA, NOPS or NIDP or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the ALJ Docketing Center.

(b) If a written application is made to NOAA after the expiration of the time period established in this part for the required filing of hearing requests, Agency counsel will promptly forward the request for hearing along with a motion in opposition, documentation of service and any other relevant materials to the ALJ Docketing Center for a determination on whether such request shall be considered timely filed. Determinations by the ALJ regarding untimely hearing requests under this section shall be in writing.

(c) Upon its receipt for filing in the ALJ Docketing Center, each request for hearing will be promptly assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

§ 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed in conformance with § 904.3 directly with the Judge, with copies served on the ALJ Docketing Center and all other parties.

(b) Unless otherwise ordered by the Judge, discovery requests and answers will be served on the opposing party and need not be filed with the Judge.

§ 904.203 [Reserved]

§ 904.204 Duties and powers of Judge.

The Judge has all powers and responsibilities necessary to preside over the parties and the hearing, to hold pre-hearing conferences, to conduct the hearing, and to render decisions in accordance with these regulations and 5 U.S.C. 554 through 557, including, but

not limited to, the authority and duty to do the following:

(a) Rule on timeliness of hearing requests pursuant to § 904.201(b);

(b) Rule on a request to participate as a party in the hearing by allowing, denying, or limiting such participation (such ruling will consider views of the parties and be based on whether the requester could be directly and adversely affected by the determination and whether the requester can be expected to contribute materially to the disposition of the proceedings);

(c) Schedule the time, 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;

(d) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to rule on motions to close the hearing 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 who refuses to answer a question ruled to be proper;

(e) Administer oaths and affirmations to witnesses;

(f) Rule on contested 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 § 904.251(h);

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

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

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

(j) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the