

Environmental Protection Agency

§ 305.31

(iii) That such information has significant probative value.

If the Presiding Officer determines that the motion should be granted, he shall issue an order for such discovery together with the conditions and terms thereof.

(5) The Presiding Officer shall order depositions upon oral questions only upon a finding that:

(i) The information sought cannot be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(6) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to:

(i) The inference that the information to be discovered would be adverse to the party from whom the information was sought; or

(ii) The issuance of a default order under § 305.24(a).

(g) *Interpreters.* The Presiding Officer shall make the necessary arrangements for the services of an interpreter upon the motion of a party or *sua sponte*. The cost of the interpreter shall normally be borne by the party requesting the service, but the Presiding Officer may apportion the cost among the parties as justice demands.

§ 305.27 Accelerated order, order to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or *sua sponte*, may at any time render an accelerated order in favor of the Requestor or the Claims Official as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and the party is entitled to judgment as a matter of law, as to all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the Claims Official, may at any time dismiss a Request for a Hearing without further hearing or upon such limited additional evidence as he requires, on the basis of failure to estab-

lish a prima facie case or other grounds which show no right to relief on the part of the Requestor.

(b) *Effect.* (1) If an accelerated order or an order to dismiss is issued as to all the issues in the proceeding, the order constitutes the final order of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated order or an order to dismiss is rendered on less than all issues in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues upon which the hearing will proceed.

Subpart D—Hearing Procedure

§ 305.30 Scheduling the hearing.

(a) *Filing of answer.* When an answer is filed, the Hearing Clerk shall forward such answer to the Presiding Officer.

(b) *Notice of hearing.* The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than 20 days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method of determining the location of a prehearing conference under § 305.26(d).

§ 305.31 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that evidence which would be excluded in the Federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C. appendix) is not admissible. In the presentation, admission, disposition,