

*National Contingency Plan* or *NCP* means the National Oil and Hazardous Substances Pollution Contingency Plan developed under section 311(c) of the Clean Water Act and revised pursuant to section 105 of CERCLA (40 CFR part 300).

*Party* means EPA or any person that participates in a proceeding under this part as a Requestor.

*Preauthorization* means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP.

*Presiding Officer* means the Administrative Law Judge designated by the Chief Administrative Law Judge, or the Chief Administrative Law Judge himself, in the absence of such designation, to conduct a hearing pursuant to this part.

*Proceeding* means the entire process of review of a claim conducted pursuant to this part that is initiated by a Request for a Hearing. A hearing is part of a proceeding.

*Request for a Hearing* means a written notice requesting an administrative hearing of the total or partial denial of a claim by the Claims Official. Such hearing shall be governed by this part.

*Requestor* is the party who files a Request for a Hearing.

*Review Officer* means the EPA Administrator or his delegatee who is authorized to exercise all powers and duties prescribed or delegated under the Act or this part to him.

*Voluntary agreement* (see §305.25) means a written communication, signed by all the parties or their counsel or representatives, containing an order acceptable to both the Requestor and EPA. A voluntary agreement shall state that, for purposes of this proceeding, EPA consents to the award of a sum certain to the Requestor or such other consideration as the parties deem appropriate. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.

(b) Terms defined in CERCLA or in 40 CFR part 300 and not defined in this part are used consistent with the meanings given in CERCLA or 40 CFR part 300.

#### **§305.4 Powers and duties of the Review Officer and the Presiding Officer; disqualification.**

(a) *Review Officer*. The Review Officer is authorized to receive Requests for a Hearing; attempt to promote settlement; make the decision of the Agency on the claim if the claimant does not request referral of the Request for a Hearing to the Chief Administrative Law Judge; and refer a Request for a Hearing to the Chief Administrative Law Judge when necessary. The Review Officer shall make the decision of the Agency on the claim in writing and shall serve the Requestor and the Claims Official with a copy of his decision. The Review Officer may, *sua sponte*, without ruling on the merits of the Request for a Hearing, refer it to the Chief Administrative Law Judge for decision. If the Requestor is not satisfied with the decision of the Review Officer, he may, within 10 days of service of such decision, request that the Review Officer refer the Request for a Hearing to the Chief Administrative Law Judge. The Requestor shall also serve such notice on the Claims Official. Otherwise the decision of the Review Officer is a final order. When referring a matter to the Chief Administrative Law Judge, the Review Officer shall include the Request for a Hearing, a copy of his decision, and any other pertinent documents. The Review Officer also shall notify the Requestor, the Hearing Clerk, and the Claims Official when he refers a Request for a Hearing to the Chief Administrative Law Judge. The Hearing Clerk, shall, upon receipt of the relevant documents, establish a file for the hearing. Thereafter, a copy of all pleadings must be filed with the Hearing Clerk. This requirement is in addition to the applicable service of documentation requirements contained in §305.5(b)(2). The Review Officer shall exercise all other powers and duties prescribed or delegated to him under the Act or this part.

(b) *Presiding Officer*. Upon receipt from the Review Officer of the Request for a Hearing, the Chief Administrative Law Judge shall designate himself or another Administrative Law Judge as Presiding Officer and shall transmit all documents related to the Request for a

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Hearing to the Presiding Officer. The Presiding Officer shall then notify the parties of his assignment pursuant to § 305.4(c). The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under this part;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, for good cause, upon motion, or *sua sponte*, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of law and fact;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Extend the time limit for a final order in the hearing for a period not to exceed 60 days;

(10) Render findings of fact, conclusions of law, and a final order;

(11) Assess costs of the proceeding pursuant to § 305.36(b);

(12) Do all other acts and take all measures necessary for the maintenance of order and for the efficient and impartial adjudication of issues arising in proceedings governed by this part; and

(13) Resolve all disputes based on the evidence and applicable law; see § 305.31 concerning evidence.

(c) The Presiding Officer shall notify the parties that the Request for a Hearing has been assigned to him, and that he has received the case file from the Chief Administrative Law Judge. After ruling on any objections to jurisdiction, or final disposition of any objections to disqualification, the Presiding Officer shall render a final order within 90 days after he affirmatively

accepts such jurisdiction. The Presiding Officer shall render a final order within the allotted time, unless all parties agree in writing to an extension, or unless, in his discretion, either upon motion of a party or *sua sponte*, he allows an extension of time not to exceed 60 days. If all parties agree in writing to an extension of the time period within which the Presiding Officer must issue a final order, the extension shall be for the period agreed to in writing by all parties. There are no limits to such periods other than that to which the parties have agreed in writing. An agreement by the parties to extend the time limit does not preclude the Presiding Officer from extending the time limit to issue a final order *sua sponte* or upon motion of a party, nor does an extension by the Presiding Officer preclude the parties from agreeing to an extension.

(d) *Disqualification; withdrawal.* (1) Neither the Review Officer nor the Presiding Officer may perform functions provided for in this part regarding any matter in which he: has a financial interest; or has any relationship with a party or with the subject matter that would make it inappropriate for him to act. A party shall, by motion presented within 5 days after receiving notice of the assignment of the Presiding Officer, make any objection to his assignment. Otherwise, any objections to the qualifications of the Presiding Officer are waived, unless such objections arise after the time for presenting objections allowed by this paragraph. In such case, any objection must be made within 5 days of the time within which it arose. Either party may appeal the Presiding Officer's ruling on a motion to disqualify him to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall rule on such motion in a timely fashion. When the Chief Administrative Law Judge is the Presiding Officer, he shall refer any challenge to his qualification to hear the case to another Administrative Law Judge for decision. The Review Officer or the Presiding Officer may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

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(2) If the Review Officer or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. The Administrator shall appoint a new Review Officer. The Chief Administrative Law Judge shall assign a new Presiding Officer from among the available Administrative Law Judges.

(3) The Chief Administrative Law Judge shall have the power to rule on motions for disqualification as described in paragraph (d)(1) of this section and may, at any stage in the hearing, reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and will not prejudice the parties.

### § 305.5 Filing, service, and form of pleadings and documents.

#### (a) Filing of pleadings and documents.

(1) The original and one copy of the Request for a Hearing shall be served on the Review Officer. Service on the Review Officer shall be made in the manner prescribed by paragraph (b) of this section. The Requestor shall serve his Request for a Hearing on the Review Officer within 30 days of receipt of the Claims Official's decision. The Review Officer shall promptly notify the Claims Official of receipt of a Request for a Hearing and shall provide him a copy of such request. The original of all other pleadings and documents shall be filed with the appropriate official and a copy served on each party.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with a party, the original of the correspondence shall be sent to the Hearing Clerk, a copy shall be maintained by the Presiding Officer

in the duplicate file, and a copy shall be sent to all parties. A party who corresponds directly with the Presiding Officer shall, in addition to serving all other parties, send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this paragraph.

(b) *Service of pleadings and documents*—(1) *Service of Request for a Hearing*. Service of a signed original Request for a Hearing with copy thereof may be made on the Review Officer either personally or by certified mail, return receipt requested. The Review Officer shall assign a docket number to the Request for a Hearing, and shall notify the Requestor, the Hearing Clerk, and the Claims Official of such docket number.

(2) *Service of documents other than the Request for a Hearing*. (i) All documents other than the Request for a Hearing may be served on the appropriate official personally or by certified mail, return receipt requested, or by first class mail, postage pre-paid. After initiation of the hearing, a party serving any document must also submit a copy of such document to the Hearing Clerk.

(ii) Service upon the Claims Official, the Review Officer, or the Hearing Clerk shall be made by delivering two copies of the document to the appropriate official in the manner prescribed in paragraph (b)(2)(i) of this section.

(iii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to an action under a common name shall be made in the manner prescribed in paragraph (b)(2)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the document in the manner prescribed by the law of the State for the service of process on any such persons, or: