

Environmental Protection Agency

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(3) EPA's issuance of the Preauthorization Decision Document, which sets forth the terms and conditions for reimbursement.

Preauthorized response actions are response actions approved through the preauthorization process.

Respond or *Response* as defined by section 101(25) of CERCLA, means remove, removal, remedy, and remedial action, all such terms (including removal and remedial action) including enforcement activities related thereto.

Response claim means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA, including certain costs of actions referred to in section 122(b)(1) of CERCLA.

§ 307.15 Penalties.

(a) If any person knowingly gives a material statement or representation in the application for preauthorization or in the claim that is false, misleading, misrepresented, or misstated, and EPA relies upon such a statement or representation in making its decision, the preauthorization or the award by EPA may be withdrawn following written notice to the claimant.

(b) Any person who knowingly gives, or causes to be given, any false information as part of an application for preauthorization or of a claim (including any person who meets the conditions of paragraph (a) of this section) may, upon conviction, be fined or imprisoned in accordance with CERCLA section 112(b)(1) and other laws.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

§ 307.20 Who may present claims.

(a) Subject to the provisions of this subpart, claims for the costs of response actions may be asserted against the Fund by any person other than the United States Government, States, and political subdivisions thereof, except to the extent the claimant is otherwise compensated for the loss. States and political subdivisions may assert such claims if they are potentially responsible parties subject to an agreement reached pursuant to section 122(b)(1) of CERCLA.

(b) Claims presented by an individual must be signed by that individual. If, because of death, disability, or other reasons satisfactory to EPA, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent, executor, administrator, or other legal representative. A claim presented by an entity or an authorized agent, executor, administrator, or other legal representative must be presented in the name of the claimant. The claim must be signed by the authorized agent, executor, administrator, or other legal representative (including the title or legal capacity of the person signing) and be accompanied by evidence of the authority to present a claim on behalf of the claimant as authorized agent, executor, administrator, or other legal representative.

(c) A claim for response costs as to which any release from liability was executed between the claimant and a potentially responsible party may be presented against the Fund to the extent that the claimant obtained EPA's approval prior to executing such release and provided that the other requirements of this part are met.

(d) A foreign claimant may present a response claim to the Fund, to the same extent that a United States claimant may assert a claim, if:

(1) The requirements of § 307.21 and § 307.22 are met; and

(2) The release of a hazardous substance occurred in the navigable waters of the United States, including the territorial sea, or in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident; and

(3) The claimant is not otherwise compensated for the loss; and

(4) The hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*); and

(5) Recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State,

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in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

§ 307.21 Nature of eligible claims.

(a) Claims may be asserted against the Fund for necessary costs incurred for response actions due to a release or substantial threat of release of a hazardous substance into the environment; a release or substantial threat of release of pollutants or contaminants into the environment that may present an imminent or substantial danger to public health or welfare; or actions taken by a potentially responsible party subject to an agreement reached pursuant to section 122(b)(1) of CERCLA. Claims must be filed in accordance with §307.22. Claims may be asserted for the costs of removal actions, remedial planning activities, and remedial actions.

(b) Costs will be considered to be eligible under this section if:

(1) The response action is preauthorized by EPA pursuant to §307.22;

(2) The costs are incurred for activities within the scope of EPA's preauthorization;

(3) The response action is conducted in a manner consistent with the NCP; and

(4) The costs incurred are necessary costs pursuant to §307.11 of this part.

(c) Money in the Fund may be used for paying any claim under this section for expenses incurred for the payment of contractor claims either through settlement of such claims or an award by a third party to the extent EPA determines that:

(1) The contractor claim arose from work within the scope of the contract at issue and the contract was for preauthorized response activities;

(2) The contractor claim is meritorious;

(3) The contractor claim was not caused by the mismanagement of the claimant;

(4) The contractor claim was not caused by the claimant's vicarious liability for the improper actions of others;

(5) The claimed amount is reasonable and necessary;

(6) The claim for such costs is filed by the claimant within 5 years of completion of the preauthorized response action; and

(7) Payment of such a claim will not result in total payments from the Fund in excess of the maximum amount for which claims were preauthorized.

(d) An award by a third party on a contractor claim under paragraph (c) of this section should include:

(1) Findings of fact;

(2) Conclusions of law;

(3) Allocation of responsibility for each issue;

(4) Basis for the amount of award; and

(5) The rationale for the decision.

(e) Money in the Fund may not be used for paying any claim under this section for expenses incurred for procurement transactions that were not conducted in a manner that provided to the maximum extent practicable, open and free competition; unduly restricted or eliminated competition; and did not provide where applicable for the award of contracts to the lowest responsive, responsible bidder where the selection was made principally on the basis of price.

(f) Money in the Fund may not be used for paying any claim under this section for expenses incurred by a person operating pursuant to a procurement contract or assistance agreement with the United States.

(g) Money in the Fund may not be used for paying any claim under this section for expenses incurred for the payment of persons who are on the "List of Parties Excluded From Federal Procurement or Non-Procurement" at the time the contract is awarded, unless EPA approval is obtained in advance.

(h) Unless EPA waives this requirement prior to the award of a construction contract, money in the Fund may not be used for paying any claim under this section for expenses incurred under such a construction contract that does not contain a "differing site conditions" clause equivalent to the following: