

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR CLAIMS AGAINST THE SUPERFUND

Subpart A—General

- Sec.
 305.1 Scope.
 305.2 Use of number and gender.
 305.3 Definitions.
 305.4 Powers and duties of the Review Officer and the Presiding Officer; disqualification.
 305.5 Filing, service, and form of pleadings and documents.
 305.6 Computation and extension of time.
 305.7 *Ex parte* discussion of proceeding.
 305.8 Examination of documents filed.

Subpart B—Parties and Appearances

- 305.10 Appearances.
 305.11 Consolidation and severance.

Subpart C—Prehearing Procedures

- 305.20 Request for a hearing; contents.
 305.21 Amendment of request for a hearing; withdrawal.
 305.22 Answer to the request for a hearing.
 305.23 Motions.
 305.24 Default order.
 305.25 Informal settlement; voluntary agreement.
 305.26 Prehearing conference.
 305.27 Accelerated order, order to dismiss.

Subpart D—Hearing Procedure

- 305.30 Scheduling the hearing.
 305.31 Evidence.
 305.32 Objections and offers of proof.
 305.33 Burden of presentation; burden of persuasion.
 305.34 Filing the transcript.
 305.35 Proposed findings, conclusions, and order.
 305.36 Final order; costs.

AUTHORITY: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

SOURCE: 58 FR 7706, Feb. 8, 1993, unless otherwise noted.

Subpart A—General

§ 305.1 Scope.

(a)(1) This part governs all administrative proceedings for the total or partial denial of response claims asserted

against the Hazardous Substance Superfund (the Fund) pursuant to sections 111(a)(2) and 122(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 *et seq.*

(2) Sections 111(a)(2) and 122(b)(1) of CERCLA authorize EPA, among other things, to use the Fund to reimburse certain persons who file claims for eligible response costs incurred in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. In the event that the Claims Official declines to pay all or part of a claim, a claimant may request an administrative hearing pursuant to § 305.4(a) within 30 days after receiving notice of the Claims Official's decision. The procedures governing such a proceeding are set forth in this part.

(b) Procedural questions arising at any stage of the proceeding which are not addressed in this part shall be resolved at the discretion of the Claims Official, the Review Officer, or the Presiding Officer, as appropriate.

§ 305.2 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine, as the case may require.

§ 305.3 Definitions.

(a) The following definitions apply to this part:

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Agency or *EPA* means the United States Environmental Protection Agency.

CERCLA or *the Act* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 *et seq.*

Claim means a demand in writing for a sum certain, which is presented to the Fund in accordance with CERCLA sections 111 and 112.

§ 305.3

40 CFR Ch. I (7-1-08 Edition)

Claimant means any person who presents a claim to the Fund for reimbursement under CERCLA section 112(b)(1).

Claims Official means the Assistant Administrator or the Regional Administrator or his delegatee who makes the initial decision awarding or denying a claim in whole or in part.

Confidential business information or *CBI* means business information for which a person has made a "business confidentiality claim" as defined in 40 CFR 2.201(h) and in accordance with all applicable provisions in 40 CFR part 2, subpart B, except insofar as the Administrator has denied the claim pursuant to the procedures in 40 CFR part 2, subpart B.

Final order means the decision of the Review Officer which has become final in accordance with §305.4(a), or of the Presiding Officer, or in the case of a voluntary agreement (see §305.25) of the parties, disposing of all legal and factual matters presented in the Request for a Hearing. A final order made by the Review Officer or the Presiding Officer shall contain findings of fact, conclusions of law, as well as the reasons therefore, and an order for an award of a sum certain, or an explanation of why no award is granted. The final order may consist of one or more of the following documents: the findings of fact, conclusions of law, and order of the Review Officer or the Presiding Officer; a voluntary agreement; an accelerated order; or a default order, if the default order provides for dismissal of the Request for a Hearing with prejudice. A final order is the final administrative decision of the Agency and (with the exception of a voluntary agreement) is appealable to the Federal district court for the district where the release or threat of release took place.

Fund or *Superfund* means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Hearing means a hearing on the record open to the public and conducted under this part.

Hearing Clerk means the Hearing Clerk, A-110, United States Environmental Protection Agency, 1200 Penn-

sylvania Ave., NW., Washington, DC 20460.

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

Environmental Protection Agency

§ 305.4

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 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.