

**§ 307.30**

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

claimed as reimbursement from the Fund for any response action.

(2) The Administrator may condition the preauthorization on such inspection, monitoring, reporting, safety, and long-term operation and maintenance requirements as he deems necessary. The costs of such requirements may not necessarily be reimbursed from the Fund.

(3) The Administrator may condition the preauthorization on such time period for starting and completing the response action as he may deem necessary.

(4) The Administrator may condition the preauthorization on such financial or other assurance from the claimant or other entity as he may deem necessary to ensure completion of work at the site.

(5) The Administrator will not subject potentially responsible parties who may wish to undertake a remedial investigation and feasibility study to a lesser standard of liability nor will he give such parties preferential treatment in EPA's review of applications for preauthorization.

(d) If EPA denies a preauthorization because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications or uses of the Fund, the applicant may resubmit the application in another fiscal year. If preauthorization is denied because of the inability of the applicant to demonstrate his experience and capabilities, the applicant may resubmit the application form only after correcting the deficiencies, or by proposing an alternative approach.

(e) If EPA grants preauthorization, the applicant may begin the approved response action subject to the terms and conditions contained in the PDD. The applicant, as a condition of preauthorization, shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring.

(f) If the applicant is unable to initiate or complete the preauthorized response action, the applicant shall immediately notify EPA in writing.

(g) EPA will not grant preauthorization for any response actions where:

(1) The proposed action is not a response action authorized under CERCLA;

(2) There is a significant threat to the public health or the environment caused by acute threat of fire, explosion, direct human contact with a hazardous substance, or other similar hazardous situations requiring immediate action, and there is insufficient time to process an application for preauthorization;

(3) The proposed response is a remedial action and the site is not on the NPL; or

(4) The action is to be performed by a State, political subdivision, Indian Tribe through an assistance agreement with the United States, or a person operating pursuant to a contract with the United States.

(h) EPA will deny preauthorization to a person whom the Agency believes is a liable party under section 107 of CERCLA unless negotiations are underway aimed at reaching a judicial or administrative settlement. Such parties may be preauthorized under this paragraph to submit claims to the Fund for response costs up to the maximum amount specified in the PDD.

**Subpart C—Procedures for Filing and Processing Response Claims**

**§ 307.30 Requesting payment from the potentially responsible party.**

(a) A claimant must present all claims to any person who is known to the claimant and who may be liable under section 107 of CERCLA at least 60 days before filing a claim against the Fund. The presentation to the potentially responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name of the claimant (commercial entity or individual);

(2) The name, title, and address of any authorized representative;

(3) The location of the release and cleanup;

(4) The date of the release, if known;

(5) The owner of the property, if other than the claimant;

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(6) A description of the response action taken; and

(7) The amount of the request (in dollars);

(8) If applicable, notice of intent to file a subsequent application for preauthorization or claim against the Fund for additional operable units or for a stage of a response action.

(b) Where the potentially responsible party is unknown, the claimant must make a good-faith effort to identify the potentially responsible party prior to submitting a claim. If the potentially responsible party is identified, the claimant must then comply with the procedures of § 307.30(a). Where a potentially responsible party cannot be identified, the claimant may submit a claim to the Fund pursuant to § 307.31. Claims submitted under this paragraph must be accompanied by documentation of efforts to identify potentially responsible parties.

(c) If the claimant and the potentially responsible party agree to a settlement involving a release from liability, the claimant may submit a claim against the Fund for any costs that are not recovered provided the claimant complies with the provisions of § 307.20(c), which require EPA's prior approval of such releases from liability.

(d) If the claim is denied by the potentially responsible party, or has not been satisfied after 60 days of presentation to such party, the claimant may submit a claim to the Fund in accordance with § 307.31.

(e) If the first claim was denied by the potentially responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such potentially responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

### § 307.31 Filing procedures.

(a) A response claim must be submitted on EPA Form 2075-4 and must include:

(1) Documentation showing that the claimed response activities were preauthorized by EPA;

(2) Documentation showing that the response activity was accomplished in

a manner consistent with the PDD, noting any deviation from preauthorized activities;

(3) Documentation that a search to identify potentially responsible parties was conducted in accordance with § 307.30 and of any contacts with such parties; and

(4) Substantiation that all claimed costs are necessary costs.

(b) Claimants (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and must be signed by the claimant or authorized representative. The time limitations of § 307.32(i) refer to the date by which an amendment is filed.

(c) Claimants may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same response costs. EPA will return claims presented under this subpart when the Agency determines that a claimant has initiated an action for recovery of the same response costs, in court, against a party potentially liable under section 107 of CERCLA.

### § 307.32 Verification, award, and administrative hearings.

(a) Upon receipt of a response claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the claimant with written notification of its deficiencies.

(b) A claim returned to the claimant for failure to comply with the filing requirements may be resubmitted to EPA.

(c) For purposes of this part, a response claim is deemed perfected when EPA determines that the claim complies fully with the specified filing requirements; i.e., the claim is technically complete. When the claim is perfected, a notice will be provided to the claimant of EPA's receipt and acceptance of the claim for evaluation.

(d) EPA may adjust claims and in making a determination whether costs are allowable, EPA will be guided by the Federal cost principles (non-profit