

### § 307.31

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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

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organizations—OMB Circular A-122; States and political subdivisions—OMB Circular A-87; profit-making organizations—48 CFR part 31, subparts 31.1 and 31.2).

(e) In evaluating claims, EPA will determine whether the claimant has settled and satisfactorily completed in accordance with sound business judgment and good administrative practice all contractual and administrative matters arising out of agreements to perform preauthorized response actions. This includes the issuance of invitations for bids or requests for proposals, selection of contractors, approval of subcontracts, settlement of protests, claims disputes, and other related procurement matters. EPA will examine how the claimant assured (e.g., by the use of a subcontract administration system) that work was performed in accordance with the terms, conditions, and specifications of such agreements.

(f) Awards will be made:

(1) Only for necessary costs of completing the response action or stage of an operable unit or of a response action;

(2) Only to the extent that the response actions were preauthorized by EPA pursuant to § 307.23;

(3) Only to the extent that the clean-up was performed effectively, as provided in 40 CFR 300.120(e)(3) and 300.400(h); and

(4) Only to the extent that the clean-up was performed in compliance with the terms and conditions of the PDD.

(g) No award will be made on a claim where the claimant has purported to release a potentially responsible party from liability to the United States for the same costs unless EPA has approved the release in advance.

(h) Where a response action is determined to have been ineffective due to acts or omissions of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(i) For claims submitted in connection with a settlement reached under section 122(b)(1) of CERCLA only, in-

terest will be paid on amounts due if EPA fails to pay the amount within 60 days of a perfected claim.

(1) Interest shall accrue on the amounts due the claimant where EPA fails to pay the claim for the preauthorized response action within 60 days of EPA's receipt of a perfected claim.

(2) Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, the period as stated in paragraph (i)(1) of this section or the accrual of interest is suspended from the date the Agency requests the information from the claimant until the date the requested information is received.

(3) Where a claim is denied in whole or in part by EPA, and the claimant requests an administrative hearing in accordance with paragraph (o) of this section, interest on the disputed amount begins to accrue 50 days after an award by the Administrative Law Judge, unless an appeal is filed. If either party files an appeal with a Federal district court, interest will not accrue until 20 days after the final judicial decision.

(4) The rate of interest paid on a claim is the rate of interest on investments of the Fund established by Subchapter A of Chapter 98 of the Internal Revenue Code of 1954.

(j) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA, a preauthorized potentially responsible party will be entitled to full reimbursement only where the response action is conducted in complete satisfaction of the requirements set forth in the consent order or decree.

(k) Future site-specific actions required by preauthorized potentially responsible parties, and any future obligations on the Fund, shall be governed by § 307.42.

(l) Any withdrawal of preauthorization will be preceded by written notice from EPA. The application for preauthorization will be deemed invalid and no award will be made from the Fund where the claimant is determined by EPA to be liable under section 107 of CERCLA for the costs for which the claim is made, and the application for preauthorization

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did not disclose that the claimant may be a person described as follows:

(1) The owner and operator of a vessel or a facility;

(2) Any person, who at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

(4) Any person who accepts or accepts any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.

(m) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the claimant. If EPA determines that it cannot complete its evaluation of a claim because the records, documents, and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate that claimed costs are necessary costs, EPA will adjust the claim accordingly. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 30 days, unless a different period of time is specified by EPA. The failure of the claimant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the claim.

(n) Once the claim is perfected, EPA will proceed to:

(1) Make an award on the claim; or

(2) Decline to make an award.

(o) If the claimant is dissatisfied either with EPA's denial of a claim or

with the amount of an award, the claimant may request that EPA arrange an administrative hearing in accordance with section 112(b) of CERCLA. The request for an administrative hearing must occur within 30 days of being notified of EPA's decision.

(p) Notice of an award under paragraph (f) of this section will be given by First Class Mail within five (5) days of the date of the decision. Payment of approved claims will be made according to §307.40.

**§ 307.33 Records retention.**

A claimant receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim, and to provide EPA with access to such records. These records must be maintained until cost recovery is initiated by EPA. If, after ten (10) years from the date of award of the final claim, EPA has not initiated a cost recovery action, the claimant need no longer retain the records. The claimant shall, however, notify EPA of the location of the records, and allow EPA the opportunity to take possession of the records before they are destroyed. The claimant shall cause to be inserted in all agreements between itself and contractors performing work at the site a clause providing for the same requirement to maintain records and to provide access to records as that required of the claimant.

**Subpart D—Payments and Subrogation**

**§ 307.40 Payment of approved claims.**

(a) Payment of claims will be made, as applicable, within:

(1) 50 days of EPA's decision to make an award, if the claimant does not request an administrative hearing;

(2) 50 days of an award by an administrative tribunal if no appeal of such award is taken; or

(3) 20 days of the final judicial decision of any appeal taken.

(b) Payment of a claim shall not be seen as EPA's final acceptance of the