

Environmental Protection Agency

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AUTHORITY: 42 U.S.C. 9607(a) and 9622(h)(2), Executive Order No. 12580, 52 FR 2923 (January 29, 1987).

SOURCE: 54 FR 23179, May 30, 1989, unless otherwise noted.

Subpart A—General

§ 304.10 Purpose.

This regulation establishes and governs procedures for the arbitration of EPA cost recovery claims arising under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), pursuant to the authority granted EPA by section 122(h)(2) of CERCLA, 42 U.S.C. 9622(h)(2), and Executive Order No. 12580, 52 FR 2923 (January 29, 1987).

§ 304.11 Scope and applicability.

The procedures established by this regulation govern the arbitration of EPA claims for recovery, under section 107(a) of CERCLA, 42 U.S.C. 9607(a), of response costs incurred at or in connection with a facility by the United States pursuant to section 104 of CERCLA, 42 U.S.C. 9604. The procedures are applicable when:

- (a) The total past and projected response costs for the facility concerned do not exceed \$500,000, excluding interest; and
- (b) The Administrator and one or more PRPs have submitted a joint re-

quest for arbitration pursuant to § 304.21 of this part.

§ 304.12 Definitions.

Terms not defined in this section have the meaning given by section 101 of CERCLA, 42 U.S.C. 9601, or the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300. All time deadlines in this part are specified in calendar days and shall be computed in the manner described in Rule 6(a) of the Federal Rules of Civil Procedure.

Except when otherwise specified, the following terms are defined for purposes of this part as follows:

(a) *CERCLA* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613 (1986).

(b) *Administrator* means the EPA Administrator or his designee.

(c) *Arbitrator* means the person appointed in accordance with § 304.22 of this part and governed by the provisions of this part.

(d) *Association* means the organization offering arbitration services selected by EPA to conduct arbitrations pursuant to this part.

(e) *Claim* means the amount sought by EPA as recovery of response costs incurred and to be incurred by the United States at a facility, which does not exceed \$500,000, excluding interest.

(f) *Ex parte communication* means any communication, written or oral, relating to the merits of the arbitral proceeding, between the Arbitrator and any interested person, which was not originally filed or stated in the administrative record of the proceeding. Such communication is not *ex parte communication* if all parties to the proceeding have received prior written notice of the proposed communication and have been given the opportunity to be present and to participate therein.

(g) *Interested person* means the Administrator, any EPA employee, any party to the proceeding, any potentially responsible party associated with the facility concerned, any person who filed written comments in the proceeding, any participant or intervenor

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in the proceeding, all officers, directors, employees, consultants, and agents of any party, and any attorney of record for any of the foregoing persons.

(h) *National Contingency Plan or NCP* means the National Oil and Hazardous Substances Pollution Contingency Plan, developed under section 311(c)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, as amended, revised periodically pursuant to section 105 of CERCLA, 42 U.S.C. 9605, and published at 40 CFR part 300.

(i) *National Panel of Environmental Arbitrators or Panel* means a panel of environmental arbitrators selected and maintained by the Association to arbitrate cost recovery claims under this part.

(j) *Participating PRP* is any potentially responsible party who has agreed, pursuant to §304.21 of this part, to submit one or more issues arising in an EPA claim for resolution pursuant to the procedures established by this part.

(k) *Party* means EPA and any person who has agreed, pursuant to §304.21 of this part, to submit one or more issues arising in an EPA claim for resolution pursuant to the procedures established by this part, and any person who has been granted leave to intervene pursuant to §304.24(a) of this part.

(l) *Persons* means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

(m) *Potentially responsible party or PRP* means any person who may be liable pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred and to be incurred by the United States not inconsistent with NCP.

(n) *Response action* means remove, removal, remedy and remedial action, as those terms are defined by section 101 of CERCLA, 42 U.S.C. 9601, including enforcement activities related thereto.

(o) *Response costs* means all costs of removal or remedial action incurred and to be incurred by the United States at a facility pursuant to section 104 of CERCLA, 42 U.S.C. 9604, including, but

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not limited to, all costs of investigation and information gathering, planning and implementing a response action, administration, enforcement, litigation, interest and indirect costs.

Subpart B—Jurisdiction of Arbitrator, Referral of Claims, and Appointment of Arbitrator

§ 304.20 Jurisdiction of Arbitrator.

(a) In accordance with the procedures established by this part, the Arbitrator is authorized to arbitrate one or more issues arising in an EPA claim when:

(1) The total past and projected response costs for the facility concerned do not exceed \$500,000, excluding interest; and

(2) The Administrator and one or more PRPs have submitted a joint request for arbitration pursuant to §304.21 of this part.

(b)(1) If the total past and projected response costs for the facility concerned increase to a dollar amount in excess of \$500,000, excluding interest, prior to the rendering of the final decision pursuant to §304.33 of this part, the parties may mutually agree to continue the proceeding as non-binding arbitration pursuant to the procedures established by this part, except that §§304.33(e) and 304.40 of this part shall not apply.

(2) If all of the parties agree to continue the proceeding as non-binding arbitration, the proposed decision rendered by the Arbitrator pursuant to §304.33 of this part shall not be binding upon the parties, unless all of the parties agree to adopt the proposed decision as an administrative settlement pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). Any administrative settlement agreed upon in this manner shall be subject to the prior written approval of the Attorney General (or his designee) pursuant to section 122(h)(1) of CERCLA and shall be subject to public comment pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i).

(3) If the parties do not agree to continue the proceeding as non-binding arbitration, or if the administrative settlement agreed upon is not approved by the Attorney General (or his designee),