recoverable by EPA, the Arbitrator shall uphold EPA’s selection of the response action, unless any participating PRP can establish that the selection was inconsistent with the NCP. The Arbitrator’s review of the adequacy of any response action taken by EPA shall be based upon the documents which formed the basis for the selection of the response action.

(2) If the Arbitrator upholds EPA’s selection of the response action in full, the Arbitrator shall award EPA all response costs incurred and to be incurred in connection with the response action, unless any participating PRP can establish that all or part of such costs were:

(i) Not actually incurred or to be incurred; or
(ii) Not actually incurred or to be incurred in connection with the response action; or
(iii) Clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

(3) If the Arbitrator upholds EPA’s selection of the response action in part, the Arbitrator shall award EPA only those response costs incurred and to be incurred in connection with the portions of the response action that were upheld, unless any participating PRP can establish that all or part of such response costs were:

(i) Not actually incurred or to be incurred; or
(ii) Not actually incurred or to be incurred in connection with the response action; or
(iii) Clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

(4) The standard of review to be applied by the Arbitrator under paragraphs (e)(1), (e)(2), and (e)(3) of this section is arbitrary and capricious or otherwise not in accordance with law.

(5) In reviewing any procedural errors alleged by any party, the Arbitrator may disallow response costs only if the errors were so serious and related to matters of such central relevance that the response action would have been significantly changed had such errors not been made.

§ 304.21 Referral of claims.

(a) If EPA believes that a claim is an appropriate candidate for arbitration, EPA will notify all identified PRPs for the facility concerned and provide such PRPs with an opportunity to discuss referral of one or more issues arising in the claim for resolution pursuant to the procedures established by this part. Alternatively, one or more PRPs at a facility may propose to EPA use of arbitration, after receipt of a demand by EPA for payment of a claim, but prior to commencement of civil litigation of the claim. Where practicable, before an agreement to refer a claim for arbitration is made final under this alternative, either the PRPs or EPA shall notify the other PRPs at the facility of the potential use of arbitration.

(b)(1) The Administrator and one or more PRPs associated with a facility may submit to the Association a joint request for arbitration of one or more issues arising in an EPA claim concerning the facility. The joint request shall be signed by all of the parties and shall include:

(i) A brief description of the facility, the EPA response action taken at the facility, the EPA claim, and the parties;
(ii) A statement of the issues arising in the claim that are being submitted by the parties for resolution by arbitration;
(iii) A statement that the parties consent to resolution of the issues jointly submitted pursuant to the procedures established by this part by an Arbitrator appointed pursuant to § 304.22 of this part;
(iv) A statement that the parties agree to be bound by the final decision on all issues jointly submitted by the parties for resolution and to pay any award made in the final decision, subject to the right to challenge the final decision solely on the grounds and in the manner prescribed by § 304.40(c) of this part;
(v) A statement that the parties agree that the award made in the final
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decision may be enforced pursuant to § 304.40(c) of this part;

(vi) A statement that the parties agree that the final decision shall be binding only with respect to the re-

sponse costs at issue in the claim submitted for arbitration;

(vii) A statement that the parties agree that the statute of limitations governing the EPA claim submitted

shall be extended for a time period equal to the number of days from the date the joint request for arbitration

is submitted to the Association to the date of resolution of any enforcement action relating to the final decision;

and

(viii) A statement that each signa-

tory to the joint request is authorized to enter into the arbitration and to bind legally the party represented by

him or her to the terms of the joint re-

quest.

(2) The joint request shall also in-

clude the name, address and telephone number of each party, and, if a party is

represented by an attorney, the attor-

ney’s name, address and telephone

number. A party changing any of this

information must promptly commu-

nicate the change in writing to the As-

sociation and all other parties. A party

who fails to furnish such information

or any changes thereto is deemed to have waived his or her right to notice

and service under this part until such
time as the party furnishes the missing

information.

(c) Any party may move to modify

the joint request for arbitration to in-
clude one or more additional issues
arising in the referred claim. To be ef-

cative, any such modification must be

signed by the Arbitrator and all other

parties. The joint request for arbitra-
tion may also be modified to add one or

more additional parties, if such inter-

vention is permitted by § 304.24(a) of

this part. To be effective, any such modi-
fication must be signed by the Ar-
bitrator, the intervening party or par-
ties, and all other parties.

(d) The statute of limitations gov-

erning the EPA claim submitted for ar-
bitration shall be extended for a time period equal to the number of days from the date the joint request for ar-
bitration is submitted to the Associa-
tion to the date of resolution of any en-
forcement action relating to the final
decision.

(e) Prior to the selection of the Asso-
ciation, the Administrator and one or

more PRPs associated with a facility

may agree to submit one or more issues arising in an EPA claim for reso-

lution by arbitration. Any such agree-

ment shall be contained in a joint re-
quest for arbitration which meets all

requirements of paragraph (b) of this
section. In any such arbitration, the
arbitrator shall be selected pursuant to

§ 304.22(e) of this part, and payment of
all costs associated with the arbitra-
tion shall be made pursuant to

§ 304.41(e) of this part. Arbitrations

agreed upon pursuant to this paragraph
shall be governed by the procedures es-
tablished by this part, except for those
procedures which pertain specifically
to the duties of the Association. All du-
ties of the Association shall be per-
formed in a manner agreed upon by all
of the parties.

§ 304.22 Appointment of Arbitrator.

(a) The Association shall establish

and maintain a National Panel of Envi-
ronmental Arbitrators.

(b) Within ten days of the filing of
the joint request for arbitration, the
Association shall identify and submit

simultaneously to all parties an
indentical list of ten persons chosen
from the National Panel of Environ-
mental Arbitrators, whom the Associa-
tion believes will not be subject to dis-
qualification because of circumstances
likely to affect impartiality pursuant
to § 304.23 of this part. Each party shall
have ten days from the date of receipt
of the list to identify any persons ob-
jected to, to rank the remaining per-
sons in the order of preference, and to
return the list to the Association. If a
party does not return the list within
the time specified, all persons on the
list are deemed acceptable to that
party. From among the persons whom
the parties have indicated as accept-
able, and, in accordance with the des-
ignated order of mutual preference, if
any, the Association shall invite an Ar-
bitrator to serve. If the parties fail to
mutually agree upon any of the persons
named, or if the invited Arbitrator is
unable to serve, or if for any other rea-
son the appointment cannot be made

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