

§ 305.25

default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have 10 days from service to reply to the motion. Default by the Claims Official constitutes, for purposes of the pending action only, an admission of all facts alleged in the claim and a waiver of his right to a hearing on such factual allegations. Default by the Requestor may result in the dismissal of the Request for a Hearing with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. The default order shall constitute the final order in the proceeding, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order; conclusions regarding all material issues of law; costs to be assessed pursuant to §305.36, if applicable; and, the amount to be awarded the claimant, if any.

(d) *Setting aside a default order.* For good cause shown, the Presiding Officer may set aside a default order.

§305.25 Informal settlement; voluntary agreement.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. Settlement conferences shall not affect the Claims Official's obligation to file a timely answer under §305.22.

(b) *Voluntary agreement.* The voluntary agreement shall state that, for the purpose of this proceeding, the Claims Official consents to the award of a sum certain to the Requestor or in the case of no award, that both parties agree to settle the matter. The voluntary agreement shall include an order acceptable to both the Requestor and EPA, and shall be signed by all parties or their counsel or representatives. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.

40 CFR Ch. I (7-1-11 Edition)

§ 305.26 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

- (1) The settlement of the case;
- (2) The simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to the pleadings;
- (4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
- (5) The limitation of the number of expert or other witnesses;
- (6) Setting a time and place for the hearing; and
- (7) Any other matters which may expedite the disposition of the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, each party at the prehearing conference shall make available to all other parties: the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony; and copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or *sua sponte*. The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference and shall serve that summary on all parties in the manner provided in