

Environmental Protection Agency

§ 305.35

a copy of the statement to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination upon the contents thereof.

(d) *Admission of affidavits and other statements where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits and other verified written statements of witnesses who are unavailable. The term “unavailable” shall have the meaning accorded to it by rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which may be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 305.32 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion into the record of the documents or exhibits excluded.

§ 305.33 Burden of presentation; burden of persuasion.

The Requestor has the burden of going forward with his case and of proving that the amount demanded in the Request for a Hearing is justified. Accordingly, the Requestor bears the burdens of presentation and persuasion. Following the establishment of a prima facie case, the Claims Official shall have the burden of presenting and of going forward with any defense to the allegations set forth in the Request for a Hearing. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 305.34 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Hearing Clerk shall notify all the parties of the availability of the transcript and shall furnish the Requestor with a copy of the transcript upon payment of the cost of reproduction, unless a Requestor can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to correct the transcript in accordance with the provision of § 305.23.

§ 305.35 Proposed findings, conclusions, and order.

Within 20 days after the parties are notified of the availability of the transcript, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a time by which reply briefs may be submitted. The Presiding Officer may by order extend the time or change the schedule of such