Environmental Protection Agency

§ 304.24

to § 304.23 of this part. Each party shall have ten days from the date of receipt of the list to identify any persons objected to, to rank the remaining persons 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 acceptable, and, in accordance with the designated order of mutual preference, if any, the Association shall invite an Arbitrator 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 reason the appointment cannot be made from the submitted lists, the Association shall make the appointment from among the other members of the Panel. In no event shall appointment of the Arbitrator by the Association take longer than thirty days from the filing of the joint request for arbitration.

(c) Within seven days of the appointment of the Arbitrator, the Association shall mail to each of the parties notice of the identity of the Arbitrator and the date of the appointment, together with a copy of these rules. The Arbitrator shall, within five days of his or her appointment, file a signed acceptance of the case with the Association. The Association shall, within seven days of receipt of the Arbitrator’s acceptance, mail notice of such acceptance to the parties.

(d) If any appointed Arbitrator should resign, die, withdraw, be disqualified or otherwise be unable to perform the duties of the office, the Association may, on satisfactory proof, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of this section, and the matter shall be resumed.

(e) If the Administrator and one or more PRPs associated with a facility enter into a joint request for arbitration prior to the selection of the Association (see §304.21(e) of this part), the Administrator and the participating PRPs shall reach mutual agreement upon the selection and appointment of an Arbitrator on a case-by-case basis, and the Administrator shall obtain the services of that person using appropriate procurement procedures. Any person appointed as an Arbitrator pursuant to this paragraph shall make disclosures to the parties pursuant to §304.23 of this part, shall resolve the issues submitted for resolution pursuant to the jurisdiction and authority granted to the Arbitrator in §304.20 of this part, and shall otherwise conduct the arbitral proceeding pursuant to the procedures established by this part.

§ 304.23 Disclosure and challenge procedures.

(a) A person appointed as an Arbitrator under §304.22 of this part shall, within five days of receipt of his or her notice of appointment, disclose to the Association any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their counsel, or any past or present relationship with any PRP to which the claim may relate.

(b) Upon receipt of such information from an appointed Arbitrator or other source, the Association shall, within two days of receipt, communicate such information to the parties. Such communication may be made orally or in writing, but if made orally, shall be confirmed in writing.

(c) If any party wishes to request disqualification of an Arbitrator, such party shall notify the Association and the other parties of such request and the basis therefor within seven days of the filing of the joint request for arbitration.

(d) The Association shall make a determination on any request for disqualification of an Arbitrator within seven days after the Association receives any such request, and shall notify the parties in writing of such determination. This determination shall be within the sole discretion of the Association, and its decision shall be final.

§ 304.24 Intervention and withdrawal.

(a)(1) No later than thirty days prior to the pre-hearing conference (see §304.31 of this part), any PRP associated with the facility which is the subject of the referred claim may move to intervene in the arbitral proceeding for
§ 304.25 Ex parte communication.

(a) No interested person shall make or knowingly cause to be made to the Arbitrator an ex parte communication.

(b) The Arbitrator shall not make or knowingly cause to be made to any interested person an ex parte communication.

(c) The Association may remove the Arbitrator in any proceeding in which it is demonstrated to the Association’s satisfaction that the Arbitrator has engaged in prohibited ex parte communication to the prejudice of any party. If the Arbitrator is removed, the procedures in §304.22(d) of this part shall apply.

(d) Whenever an ex parte communication in violation of this section is received by or made known to the Arbitrator, the Arbitrator shall immediately notify in writing all parties to the proceeding of the circumstances and substance of the communication and may require the party who made the communication or caused the communication to be made, or the party whose representative made the communication or caused the communication to be made, to show cause why that party’s arguments or claim should not be denied, disregarded, or otherwise adversely affected on account of such violation.

(e) The prohibitions of this section apply upon appointment of the Arbitrator and terminate on the date of the final decision.

Subpart C—Hearings Before the Arbitrator

§ 304.30 Filing of pleadings.

(a) Discovery shall be in accordance with this section and §304.31 of this part.

(b) Within thirty days after receipt of the notice of appointment of the Arbitrator (see §304.22 of this part), EPA shall submit to the Arbitrator two copies of a written statement and shall serve a copy of the written statement upon all other parties. The written statement shall include the information requested in paragraphs (b)(1), (b)(6), and (b)(7) of this section, shall include the information requested in paragraph (b)(2) of this section if the issue of liability of any participating PRP has been submitted for resolution, shall include the information requested in paragraph (b)(4) of this section if the issue of the dollar amount of response costs recoverable by EPA, shall include the information requested in paragraph (b)(3) of this section if any issue concerning the adequacy of EPA’s response action has been submitted for resolution or may arise during the Arbitrator’s determination of the dollar amount of response costs recoverable by EPA.