AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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 submissions or allow further submissions as may be appropriate. All submissions shall be in writing, shall be served upon all parties, and shall contain references to the record for all proposed findings of fact and appropriate citations for authorities relied upon.

§ 305.36 Final order; costs.

(a) *Filing and content.* The Presiding Officer shall issue and file with the Hearing Clerk a final order as soon as practicable after the period for filing reply briefs under § 305.35 has expired, but within the time allowed for issuance of a final order as prescribed by § 305.4(d). The final order shall contain his findings of fact, conclusions of law, as well as the reasons therefor, and an order for an award for a sum certain, or an explanation of why no award is granted.

(b) *Costs.* If the Presiding Officer concludes in writing that the Request for a Hearing was frivolous, he may direct the Hearing Clerk to assess all or part of the costs of the proceeding against the Requestor. In such case, the Hearing Clerk shall assess such costs as directed by the Presiding Officer, and shall serve notice of such direction and the amount of such costs on all parties. No later than 5 days after receipt of notice of assessment of costs, the Requestor may move that the Presiding Officer review the assessment of costs

by the Hearing Clerk. The Presiding Officer may uphold, reverse, or modify the action of the Hearing Clerk in assessing costs.

PART 307—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) CLAIMS PROCEDURES

Subpart A—General

Sec.
307.10 Purpose.
307.11 Scope and applicability.
307.12 Use of number and gender.
307.13 Computation of time.
307.14 Definitions.
307.15 Penalties.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

307.20 Who may present claims.
307.21 Nature of eligible claims.
307.22 Preauthorization of response actions.
307.23 EPA's review of preauthorization applications.

Subpart C—Procedures for Filing and Processing Response Claims

307.30 Requesting payment from the potentially responsible party.
307.31 Filing procedures.
307.32 Verification, award, and administrative hearings.
307.33 Records retention.

Subpart D—Payments and Subrogation

307.40 Payment of approved claims.
307.41 Subrogation of claimants' rights to the Fund.
307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to CERCLA section 122.
APPENDIX A TO PART 307—APPLICATION FOR PREAUTHORIZATION OF A CERCLA RESPONSE ACTION
APPENDIX B TO PART 307—CLAIM FOR CERCLA RESPONSE ACTION
APPENDIX C TO PART 307—NOTICE OF LIMITATIONS ON THE PAYMENT OF CLAIMS FOR RESPONSE ACTIONS, WHICH IS TO BE PLACED IN THE FEDERAL REGISTER PREAMBLE WHENEVER SITES ARE ADDED TO THE FINAL NPL
APPENDIX D TO PART 307—NOTICE OF LIMITATIONS ON THE PAYMENT OF CLAIMS FOR RESPONSE ACTIONS WHICH IS TO BE PLACED IN PUBLIC DOCKETS

AUTHORITY: 42 U.S.C. 9601 *et seq.*; sections 4 and 9, E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

SOURCE: 58 FR 5475, Jan. 21, 1993, unless otherwise noted.

Subpart A—General

§ 307.10 Purpose.

This part prescribes the appropriate forms and procedures for presenting claims for necessary response costs as authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (herein referred to as CERCLA, or the Act) (42 U.S.C. 9601 *et seq.*). Such claims may be presented to the Hazardous Substance Superfund (the Fund) established by section 9507 of the Internal Revenue Code of 1986. See section 101(11) of CERCLA.

§ 307.11 Scope and applicability.

(a) The following may be submitted only through the procedures established by this part: claims for responses to a release or substantial threat of release of a hazardous substance into the environment; claims for responses to a release or substantial threat of release of any pollutants or contaminants into the environment, which may present an imminent and substantial danger to public health or welfare; and claims for response actions undertaken pursuant to settlement agreements in which the Federal Government agrees to reimburse a portion of the cost. Under this part, persons may bring claims for necessary costs incurred in carrying out the National Contingency Plan (NCP) (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and revised pursuant to section 105 of CERCLA. Only response actions that EPA has preauthorized are eligible for reimbursement through the claims process of section 112 of CERCLA. Authority for the payment of claims for response costs is provided by section 111(a)(2) of CERCLA. Authority for the reimbursement of certain costs incurred by parties to a settlement agreement entered pursuant to section 122 of CERCLA is provided by section 122(b) of CERCLA.

(b) This part does not affect the terms and conditions contained in