

(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.

§ 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 § 305.5(b)(2). The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of the prehearing conference.* The prehearing conference shall be held in the county where the release occurred, in the city in which the EPA Regional Office is located (in the Region where the release or threat of release occurred), or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or *sua sponte*, may direct the parties to correspond

with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery.* (1) Discovery shall include any of the methods described in rule 26(a) of the Federal Rules of Civil Procedure.

(2) The parties may conduct any mutually agreed upon discovery without participation or determination of the Presiding Officer except that such voluntary discovery may be subject to such time limitations as the Presiding Officer deems appropriate.

(3) Except as provided by paragraphs (b) and (f)(2) of this section, further discovery, under this section, shall be permitted only pursuant to order of the Presiding Officer. Any party to the proceeding desiring an order of discovery shall make a motion therefore. Such motion shall set forth:

(i) The circumstances warranting the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The method of discovery sought, including, where relevant, the proposed time and place where the discovery will be conducted.

(4) The Presiding Officer shall issue an order for discovery only upon a showing of good cause and upon a determination:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value.

If the Presiding Officer determines that the motion should be granted, he shall issue an order for such discovery together with the conditions and terms thereof.

(5) The Presiding Officer shall order depositions upon oral questions only upon a finding that:

(i) The information sought cannot be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(6) When the information sought to be obtained is within the control of one of the parties, failure to comply with

an order issued pursuant to this paragraph may lead to:

(i) The inference that the information to be discovered would be adverse to the party from whom the information was sought; or

(ii) The issuance of a default order under §305.24(a).

(g) *Interpreters.* The Presiding Officer shall make the necessary arrangements for the services of an interpreter upon the motion of a party or *sua sponte*. The cost of the interpreter shall normally be borne by the party requesting the service, but the Presiding Officer may apportion the cost among the parties as justice demands.

§305.27 Accelerated order, order to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or *sua sponte*, may at any time render an accelerated order in favor of the Requestor or the Claims Official as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and the party is entitled to judgment as a matter of law, as to all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the Claims Official, may at any time dismiss a Request for a Hearing without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the Requestor.

(b) *Effect.* (1) If an accelerated order or an order to dismiss is issued as to all the issues in the proceeding, the order constitutes the final order of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated order or an order to dismiss is rendered on less than all issues in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues upon which the hearing will proceed.