

### Subpart D—Hearing Procedure

#### § 305.30 Scheduling the hearing.

(a) *Filing of answer.* When an answer is filed, the Hearing Clerk shall forward such answer to the Presiding Officer.

(b) *Notice of hearing.* The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than 20 days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method of determining the location of a prehearing conference under § 305.26(d).

#### § 305.31 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that evidence which would be excluded in the Federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C. appendix) is not admissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall follow the provisions regarding confidential business information of 40 CFR part 2, subpart B for CERCLA. The commercial or trade secret status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental final order to address questions of law or fact which arise out of that portion of the evidence which is confidential or which includes trade secrets. For the purpose of recording the hearing, the court reporter shall be considered "a person under contract or subcontract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act" pursuant to 40 CFR 2.301(h)(2); unless the affected business, as defined in 40

CFR 2.201(d), agrees to some other procedures approved by the Presiding Officer.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the Presiding Officer. A party shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Verified statements.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, statements of fact or opinions prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver 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