



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 304

[EPA-HQ-OLEM-2026-2047; FRL-13112-01-OLEM]

RIN 2050-AH48

Rescinding the Regulations for Arbitration Requirements and Procedures for Small Superfund Cost Recovery Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to rescind regulations establishing arbitration procedures for small cost recovery claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is proposing this rescission to simplify the body of Federal regulations.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2026-2047, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management, Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday–Friday (except Federal Holidays).

FOR FURTHER INFORMATION CONTACT: Scott Mansfield, Office of Land and Emergency Management, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, telephone number: (202) 566-0174, email address: mansfield.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2026-2047, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. General Information

A. Does this action apply to me?

This action may affect individuals, corporations, or municipalities that are currently engaged in Small Superfund Cost Recovery Claims arbitration proceedings or may engage in those proceedings in the future.

B. What action is the agency taking?

Environmental Protection Agency (EPA) is proposing to rescind all of the regulations found in part 304 (“Arbitration Procedures for Small Superfund Cost Recovery Claims”) of subchapter J (“Superfund, Emergency Planning, and Community Right-to-Know Programs”) of chapter I of title 40 of the CFR. Section 107(a) of CERCLA establishes liability for certain response costs associated with hazardous substances and the release thereof, *see* 42 U.S.C. 9607, and section 122(h)(2) of CERCLA establishes that arbitration may be used as a method of settling such claims brought by the United States where the total response costs do not exceed \$500,000 (excluding interest), *see* 42 U.S.C. 9622(h)(2). To that end, section 122(h)(2) of CERCLA provides that department and agency heads “may establish and publish regulations for the use of arbitration or settlement” “[a]fter consultation with the Attorney General.” *Id.* 40 CFR part 304 contains the regulations that EPA promulgated to establish procedures for the arbitration of section 107(a) cost recovery claims brought by EPA. *See* 40 CFR 304.10; 40 CFR 304.11. For example, part 304 establishes specific processes for, among other things, the referral of claims to arbitration, *see* 40 CFR 304.21; the appointment of an arbitrator, *see* 40 CFR 304.22; and intervention in and withdrawal from arbitration, *see* 40 CFR 304.24. Part 304 also sets forth specific requirements and procedures related to arbitral pleadings, pre-hearing conferences, hearings, and decisions. *See* 40 CFR 304.30–304.33. EPA now finds part 304 to be unnecessary.

Arbitration was intended to be an alternative dispute resolution technique for reaching settlements with individuals, corporations, or municipalities in appropriate small cost recovery cases. However EPA is not aware of the last time the process was used or if it has been used at all. In addition to the questionable utility of the alternative process given its lack of use, if that process were ever used in the future, the Agency could be in the position of using an unpracticed method, which may require shifting and/or reallocating limited agency resources. In the original proposed and final rulemakings for part 304, EPA explained that “arbitration is an alternative dispute resolution technique that should provide a quicker and less costly method of resolution than traditional litigation or negotiation.” 53 FR 29428, 54 FR 23179. The absence of parties that

have used arbitration pursuant to part 304 could indicate that it is not as quick and simple of a process as we originally thought. EPA is soliciting comments on this interpretation. Additionally, no statute requires EPA to establish an extensive framework governing arbitration; instead, EPA exercised its discretionary authority and opted to promulgate such regulations as permitted by section 122(h)(2) of CERCLA. *See* 42 U.S.C. 9622(h)(2). Moreover, part 304 introduces a significant amount of complexity to the body of Federal regulations, as it establishes specific and somewhat complicated requirements and processes for the arbitration of a particular subset of section 107(a) cost recovery claims brought by EPA.

EPA is therefore proposing to rescind part 304 in its entirety to simplify the body of Federal regulations. EPA seeks comments on this proposed action.

C. What is the agency's authority for taking this action?

The authority to propose this rule is found in sections 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9607 and 9622).

D. What are the costs and benefits of this action?

By eliminating an unused method of dispute resolution and removing unnecessary regulatory text, this action will reduce complexity for regulated entities engaging with the federal government.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. The proposed rule is expected to provide burden reduction by simplifying the body of Federal regulations.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

D. The Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This proposed rule is a deregulatory action and does not add any additional burden. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action will impose no enforceable duty on any state, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65

FR 67249, November 9, 2000) because it does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply. This action is proposing to rescind regulations establishing arbitration procedures for small cost recovery claims. There are no children’s health considerations for this action.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51

This action does not involve technical standards.

List of Subjects in 40 CFR Part 304

Environmental protection, Claims, Superfund.

Lee Zeldin,
Administrator.

PART 304—[REMOVED AND RESERVED]

For the reasons set forth in the preamble, and under the authority of 42 U.S.C. 9607(a) and 9622 (h)(2), Executive Order No. 12580, 52 FR 2923 (January 29, 1987), EPA proposes to remove and reserve 40 CFR part 304.

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