



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 305

[EPA-HQ-OLEM-2026-2048; FRL-13113-01-OLEM]

RIN 2050-AH49

### Amending the Administrative Hearing Procedures for Claims Against the Hazardous Substance Superfund Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Environmental Protection Agency (EPA) is proposing to amend the administrative hearing procedures for claims brought against the Hazardous Substance Superfund pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

**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-2026-2048, 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).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov>, including personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**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](mailto:mansfield.scott@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### *Written Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2026-2048, 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 affects persons who file claims for eligible response costs incurred in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan.

*B. What action is the agency taking?*

EPA is proposing to make one revision to 40 CFR part 305, which are the regulations Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Hearing Procedures for Claims Against the Superfund. Sections 111(a)(2) and 122(b)(1) of CERCLA authorize EPA to, among other things, use the Hazardous Substance Superfund to reimburse certain persons who file claims for eligible response costs incurred in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan. In this action, EPA is proposing to amend § 305.31(a). Upon further evaluation, and for the reasons explained herein, EPA has determined that this revision is appropriate.

40 CFR 305.31(a)

Section 305.31 sets forth the rules of evidence for the relevant administrative hearings. It provides, as general rule, that “The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value...” 40 CFR 305.31(a). Notably, the exclusion of evidence that is simply “of little probative value” does not align with the Federal Rules of Evidence. EPA determines that excluding such evidence is unwarranted, particularly because the exclusion of evidence that is “irrelevant, immaterial, unduly repetitious, or otherwise unreliable” thoroughly addresses concerns related to relevancy. EPA is proposing to remove from § 305.31(a) the language excluding evidence that is “of little probative value” to simplify the body of Federal regulations and to enable the admission of evidence that is relevant and otherwise acceptable but also “of little probative value” when considered by itself.

In sum, EPA is proposing to amend § 305.31 to simplify the body of Federal regulations. EPA is seeking comments on these proposed changes. In this proposal, EPA is not reconsidering,

proposing to reopen, or otherwise soliciting comment on any other provisions of the existing Part 305 regulations or other regulations governing claims asserted against the Hazardous Substance Superfund beyond those specifically identified in this proposal. EPA will not respond to comments submitted on any issues other than those specifically identified in this proposal, and such comments will not be considered part of the rulemaking record.

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

The authority to propose this rule is found in sections 111, 112 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. 9611, 9612, and 9622).

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

By removing unnecessary regulatory text this action will reduce the complexity of the body of the Federal regulations, which should result in an overall general reduction in burden for regulated entities using the Code of Federal Regulations (CFR).

### **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 action will reduce the regulatory burden on regulated entities associated with these procedures. 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 amend the administrative hearing procedures for claims brought against the Hazardous Substance Superfund. 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 305**

Environmental protection, Cost recovery, Hazardous substances, Liability, Superfund.

**Lee Zeldin,**  
*Administrator.*

For the reasons set forth in the preamble, EPA proposes to amend part 305 of chapter I, subchapter J, of title 40 of the Code of Federal Regulations as follows:

**PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,  
AND LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR  
CLAIMS AGAINST THE SUPERFUND**

1. The authority citation for part 305 continues to read as follows:

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

**Subpart D—Hearing Procedure**

2. In § 305.31, revise paragraph (a) to read as follows:

**§ 305.31 Evidence.**

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable 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.

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