

§ 305.5

40 CFR Ch. I (7-1-02 Edition)

unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and will not prejudice the parties.

**§ 305.5 Filing, service, and form of pleadings and documents.**

(a) *Filing of pleadings and documents.*

(1) The original and one copy of the Request for a Hearing shall be served on the Review Officer. Service on the Review Officer shall be made in the manner prescribed by paragraph (b) of this section. The Requestor shall serve his Request for a Hearing on the Review Officer within 30 days of receipt of the Claims Official's decision. The Review Officer shall promptly notify the Claims Official of receipt of a Request for a Hearing and shall provide him a copy of such request. The original of all other pleadings and documents shall be filed with the appropriate official and a copy served on each party.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with a party, the original of the correspondence shall be sent to the Hearing Clerk, a copy shall be maintained by the Presiding Officer in the duplicate file, and a copy shall be sent to all parties. A party who corresponds directly with the Presiding Officer shall, in addition to serving all other parties, send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this paragraph.

(b) *Service of pleadings and documents.*

(1) *Service of Request for a Hearing.* Service of a signed original Request for a Hearing with copy thereof may be made on the Review Officer either personally or by certified mail, return receipt requested. The Review Officer shall assign a docket number to the Request for a Hearing, and shall notify the Requestor, the Hearing Clerk, and

the Claims Official of such docket number.

(2) *Service of documents other than the Request for a Hearing.* (i) All documents other than the Request for a Hearing may be served on the appropriate official personally or by certified mail, return receipt requested, or by first class mail, postage pre-paid. After initiation of the hearing, a party serving any document must also submit a copy of such document to the Hearing Clerk.

(ii) Service upon the Claims Official, the Review Officer, or the Hearing Clerk shall be made by delivering two copies of the document to the appropriate official in the manner prescribed in paragraph (b)(2)(i) of this section.

(iii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to an action under a common name shall be made in the manner prescribed in paragraph (b)(2)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the document in the manner prescribed by the law of the State for the service of process on any such persons, or:

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by personal service or certified mail, as prescribed by paragraph (b)(1) of this section, directed to the Chief Executive Officer thereof;

(B) If upon a State or local officer, by personal service or certified mail, as prescribed by paragraph (b)(1) of this section, to such officer.

(v) Service upon an officer of agency of the United States shall be made by delivering a copy of the document to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the document shall be served as prescribed in paragraph (b)(2)(iii) of this section.

(c) *Form of pleadings and documents.*  
(1) Except as provided herein, or by

## Environmental Protection Agency

## § 305.6

order of the Presiding Officer, there are no specific requirements as to the form of documents.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the Requestor, the docket number assigned by the Review Officer, and the official to whom the document is directed. All pleadings greater than ten pages in length, and all legal briefs, shall contain a table of contents and a table of citations with page references.

(3) The original of any pleading, letter or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter, or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any party shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the appropriate official, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under this part.

(5) The Claims Official, Review Officer, Presiding Officer, or Hearing Clerk may refuse to file any document which does not comply with paragraph (c) of this section. Written notice of such refusal, stating the reasons therefore, shall be promptly given to the party submitting the document. Such party may amend and resubmit any document refused for filing, if such amendment and resubmission is timely. If, for good cause shown, amendment and resubmission is not timely, a party may request an extension of the time in which to submit a document to the appropriate official.

(d) *Confidential Business Information.*

(1) Any person filing or serving any pleading or document under this part containing information claimed as Confidential Business Information (CBI) shall assert the claim as specified in 40 CFR 2.203(b). The failure to assert a CBI claim in accordance with this section, at the time the pleading or

document is filed or served, shall constitute a waiver of any rights to assert any CBI claim with respect to the business information in the pleading or document.

(2) Any pleading or document containing CBI shall be filed in a double envelope. The outside envelope should not mention that CBI is contained. The inside envelope shall specify the envelope contains CBI.

(3) For each original or copy of each pleading or document filed or served which contains CBI, the person shall submit two versions.

(i) One version must be complete. In that version, the person shall mark the specific information claimed as CBI pursuant to this section.

(ii) The CBI must be deleted in the second version, and all information claimed as CBI must be indicated in such version, as well as the nature of the information claimed as CBI, and the fact that another version containing the CBI has been filed pursuant to this section.

(4) The Hearing Clerk shall not accept for filing any CBI pleading or document which does not comply with the requirements of paragraphs (d)(2) and (3) of this section.

(5) All claims of CBI, and all information entitled to treatment as CBI, shall be governed by the provisions of 40 CFR part 2, subpart B, for CERCLA, as well as any other EPA regulatory provisions affecting the confidentiality of the information.

[58 FR 7706, Feb. 8, 1993, as amended at 59 FR 26, Jan. 3, 1994]

### § 305.6 Computation and extension of time.

(a) *Computation.* In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extension of time.* The Presiding Officer, or Review Officer as appropriate, may grant an extension of time