

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

§ 305.7

for the filing of any pleading, document or motion upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(c) *Service by mail.* Service of the Request for a Hearing is complete when the return receipt is signed by the Review Officer. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, 5 days shall be added to the time allowed by this part for the filing of a responsive pleading or document.

§ 305.7 Ex parte discussion of proceeding.

At no time after the Request for a Hearing is referred to the Presiding Officer shall the Presiding Officer discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performed a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as an argument made in the proceeding and shall be served upon all other parties. Any other party shall be given the opportunity to reply to such memorandum or communication.

§ 305.8 Examination of documents filed.

(a) *Inspection of Documents.* Subject to the provisions of law restricting public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding.

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

Such documents shall be made available by the Claims Official, Review Officer, or Hearing Clerk, as appropriate.

(b) *Costs.* The cost of duplicating documents filed in any proceeding shall be borne by the person seeking copies of such documents. The Agency may waive this cost in appropriate cases.

Subpart B—Parties and Appearances

§ 305.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 305.11 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may, by motion or *sua sponte*, consolidate any or all matters at issue in two or more proceedings docketed under this part where:

- (1) There exist common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues; and

(3) Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(b) *Severance.* The Presiding Officer may, by motion or *sua sponte*, for good cause shown, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 305.20 Request for a hearing; contents.

(a) Within 30 days after receiving notice that the Claims Official has declined to pay all or part of a claim, the claimant may file a Request for a Hearing with the Review Officer. The Request for a Hearing shall contain:

- (1) A statement of the authority for the Request for a Hearing;