

## §511.16

period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this part, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period.

(c) *Extensions.* For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed under this part or by order of the Administrator or the Presiding Officer, except those governing the filing of interlocutory appeals and appeals from Initial Decisions and those expressly requiring the Administrator's action. Except as otherwise provided by law, the Administrator, for good cause shown, may extend any time limit prescribed under this part, or by order of the Administrator or the Presiding Officer. A party or participant may petition the Presiding Officer or the Administrator, as appropriate, for an extension under this paragraph. Such a petition shall be filed prior to the occurrence of the time limit which is the subject of the petition.

### §511.16 Service.

(a) *Mandatory service.* Every document filed with the Office of Hearings shall be served upon all parties and participants to a proceeding, i.e., Complaint Counsel, respondent(s), and participants, and upon the Presiding Officer.

(b) *Service of complaint, ruling, order, decision, or subpoena.* Service of a complaint, ruling, order, decision, or subpoena may be effected as follows:

(1) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his or its residence or

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principal office or place of business; registered or certified; and mailed; or

(2) *By delivery to an individual.* A copy of the document may be delivered to the person to be served; or to a member of the partnership to be served; or to the president, secretary, or other executive officer, or a director of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(3) *By delivery to an address.* A copy of the document may be left at the principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer, a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served.

(c) *Service of documents with prescribed response periods.* When service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document shall be served as provided in paragraph (b) of this section.

(d) *Service of other documents.* All documents other than those specified in paragraph (c) of this section may be served as provided in paragraph (b) of this section, or by ordinary first-class mail, properly addressed, postage prepaid.

(e) *Service on a representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service on the party.

(f) *Certificate of service.* The original of every document filed with the agency and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing, postage

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prepaid (or by delivering in person) a copy to each such party.

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signature) \_\_\_\_\_  
For \_\_\_\_\_

(g) *Date of service.* The date of service of a document shall be the date on which the document is deposited in the United States mail or is delivered in person.

[45 FR 81578, Dec. 11, 1980, as amended at 53 FR 15783, May 3, 1988]

**§ 511.17 Public participation.**

*Participant Status.* Any person interested in a proceeding commenced pursuant to § 511.11 who desires to participate in the proceeding, shall file with the Docket Section a notice of intention to participate in the proceeding and shall serve a copy of such notice on each party to the proceeding. A notice of intention to participate shall be filed not later than the commencement of the hearing. Untimely filings will not be accepted absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time. Any person who files a notice to participate in the proceeding as a nonparty shall be known as a "participant" and shall have the rights specified in § 511.41(d).

[53 FR 15783, May 3, 1988]

**§ 511.18 Joinder of proceedings.**

Two or more matters which have been scheduled for adjudicative proceedings, and which involve one or more common questions of law or fact, may be consolidated for the purpose of hearing, appeal or the Administrator's review. A motion for consolidation for the purpose of hearing may be filed with the Presiding Officer by any party to such proceedings not later than thirty (30) days prior to the hearing. A motion for consolidation for the purpose of appeal may be filed by any party to such proceedings within 10 days after issuance of the Initial Decision. A motion to consolidate shall be served upon all parties to all proceedings whose joinder is contemplated. The proceedings may be consolidated where to do so would tend to avoid unnecessary

costs or delay. Such consolidation may also be ordered upon the initiative of the Presiding Officer or the Administrator, as appropriate. The Presiding Officer may order separate hearings on any issue where to do so would promote economy or convenience or would avoid prejudice to a party.

**Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Judgment; Settlement**

**§ 511.21 Prehearing conferences.**

(a) *When held.* (1) A prehearing conference shall be held in person or by conference telephone call, except in unusual circumstances, approximately fifty (50) days after publication in the FEDERAL REGISTER of the complaint, upon ten (10) days notice to all parties and participants, to consider any or all the following:

- (i) Motions for consolidation of proceedings;
- (ii) Identification, simplification and clarification of the issues;
- (iii) Necessity or desirability of amending the pleadings;
- (iv) Stipulations and admissions of fact and of the content and authenticity of documents;
- (v) Oppositions to notices of oral examination;
- (vi) Motions for protective orders to limit or modify discovery;
- (vii) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;
- (viii) Limitation of the number of witnesses, particularly the avoidance of duplicate expert witnesses;
- (ix) Matters of which official notice will be taken and matters which may be resolved by reliance upon findings of other Federal agencies; and
- (x) Other matters which may expedite the conduct of the hearing.

**§ 511.22 Prehearing briefs.**

Not later ten (10) days prior to the hearing, the parties shall, except when ordered otherwise by the Presiding Officer in unusual circumstances, simultaneously serve and file prehearing briefs, which shall set forth (a) a statement of the facts expected to be proved, and of the anticipated order of