

Environmental Protection Agency

§ 305.11

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 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 in-

vestigative 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. 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;

(2) A concise statement of the reasons that the Requestor disputes the Claims Official's denial of all or part of the claim;

(3) A request for an administrative hearing concerning the Claims Official's total or partial denial of his claim pursuant to this part; and

(4) A statement of amount that the Requestor demands to be awarded from the Fund.

(b) The Requestor must file with the Request for a Hearing two copies of:

(1) The Preauthorization Decision Document for the response work that is the subject of the claim;

(2) The claim filed with EPA pursuant to CERCLA section 111(a)(2) or 122(b)(1); and

(3) The written notice from the Claims Official denying all or part of the claim.

§ 305.21 Amendment of request for a hearing; withdrawal.

(a) *Amendment of Request for a Hearing.* The Requestor may amend the Request for a Hearing once as a matter of right at any time before the answer is filed. Otherwise the Requestor may amend the Request for a Hearing only upon motion granted by the Presiding Officer. The Claims Official shall have 10 additional days from the date of service of the amended claim to file his answer.

(b) *Withdrawal of Request for a Hearing.* The Requestor may withdraw the Request for a Hearing, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal without prejudice before the filing of an answer, or after the filing of an answer, the Requestor may withdraw the Request for a Hearing, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer. In no case may a Request for a Hearing be filed more than 30 days after the Requestor has received notice that the Claims Official has declined to pay all or part of a claim.

§ 305.22 Answer to the request for a hearing.

(a) *General.* The Claims Official shall file an original and one copy of a written answer to the Request for a Hearing with the Hearing Clerk when he contests any material fact upon which the Request for a Hearing is based; contends that the amount of money demanded in the Request for a Hearing is inappropriate; or contends that he is entitled to judgment as a matter of law. Any such answer to the Request for a Hearing must be filed with the Hearing Clerk and served on all parties within 15 days after the Presiding Officer has assumed jurisdiction over the case as provided by § 305.4(d).

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny, or explain each of the factual allegations in the Request for a Hearing with regard to which the Claims Official has any knowledge. When the Claims Official has no knowledge of a particular allegation and so states, the allegation is deemed denied. The answer shall also state:

(1) The circumstances or arguments which are alleged to constitute the grounds of defense; and

(2) The facts which the Claims Official intends to place at issue.

(c) *Failure to admit, deny, or explain.* Failure of the Claims Official to admit, deny or explain any material factual allegation contained in the claim constitutes an admission of the allegation.

(d) *Amendment of the answer.* The Claims Official may amend the answer