

Environmental Protection Agency

§ 305.21

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. 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

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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.

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(d) *Amendment of the answer.* The Claims Official may amend the answer to the Request for a Hearing upon motion granted by the Presiding Officer.

§ 305.23 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall be in writing; state the grounds therefor with particularity; set forth the relief sought and a proposed order; and be accompanied by an affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by § 305.5(b)(2)(i).

(b) *Response to motions.* A party's response to any written motion must be filed within 10 days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter time for response, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer, or Chief Administrative Law Judge, in the absence of a Presiding Officer, shall rule on all motions. Oral argument on motions will be permitted in the discretion of the Presiding Officer. See § 305.4(a) concerning motions to extend the time limit for final orders.

§ 305.24 Default order.

(a) *Default.* A party may be found to be in default: after motion, upon failure of the Claims Official to file a timely answer to the Request for a Hearing; after motion or *sua sponte*, upon failure to comply with a pre-hearing or hearing order of the Presiding Officer; or after motion or *sua sponte*, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of failure to appear at a hearing shall be made against the Claims Official unless the Requestor presents sufficient evidence to the Presiding Officer to establish a *prima facie* case in support of his claim. Any motion for a