Environmental Protection Agency

§ 305.5

(11) Assess costs of the proceeding pursuant to §305.36(b);
(12) Do all other acts and take all measures necessary for the maintenance of order and for the efficient and impartial adjudication of issues arising in proceedings governed by this part; and
(13) Resolve all disputes based on the evidence and applicable law; see §305.31 concerning evidence.

(c) The Presiding Officer shall notify the parties that the Request for a Hearing has been assigned to him, and that he has received the case file from the Chief Administrative Law Judge. After ruling on any objections to jurisdiction, or final disposition of any objections to disqualification, the Presiding Officer shall render a final order within 90 days after he affirmatively accepts such jurisdiction. The Presiding Officer shall render a final order within the allotted time, unless all parties agree in writing to an extension, or unless, in his discretion, either upon motion of a party or sua sponte, he allows an extension of time not to exceed 60 days. If all parties agree in writing to an extension of the time period within which the Presiding Officer must issue a final order, the extension shall be for the period agreed to in writing by all parties. There are no limits to such periods other than that to which the parties have agreed in writing. An agreement by the parties to extend the time limit does not preclude the Presiding Officer from extending the time limit to issue a final order sua sponte or upon motion of a party, nor does an extension by the Presiding Officer preclude the parties from agreeing to an extension.

(d) Disqualification; withdrawal. (1) Neither the Review Officer nor the Presiding Officer may perform functions provided for in this part regarding any matter in which he: has a financial interest; or has any relationship with a party or with the subject matter that would make it inappropriate for him to act. A party shall, by motion presented 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 after the time for presenting objections allowed by this paragraph. In such case, any objection must be made within 5 days of the time within which it arose. Either party may appeal the Presiding Officer’s ruling on a motion to disqualify him to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall rule on such motion in a timely fashion. When the Chief Administrative Law Judge is the Presiding Officer, he shall refer any challenge to his qualification to hear the case to another Administrative Law Judge for decision. The Review Officer or the Presiding Officer may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Review Officer or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. The Administrator shall appoint a new Review Officer. The Chief Administrative Law Judge shall assign a new Presiding Officer from among the available Administrative Law Judges.

(3) The Chief Administrative Law Judge shall have the power to rule on motions for disqualification as described in paragraph (d)(1) of this section and may, at any stage in the hearing, reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the 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.

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

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

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

(ii) 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, 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.
§ 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 shall 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