Environmental Protection Agency

§ 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 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
§ 305.25 Informal settlement; voluntary agreement.

(a) Settlement policy. The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. Settlement conferences shall not affect the Claims Official’s obligation to file a timely answer under § 305.22.

(b) Voluntary agreement. The voluntary agreement shall state that, for the purpose of this proceeding, the Claims Official consents to the award of a sum certain to the Requestor or in the case of no award, that both parties agree to settle the matter. The voluntary agreement shall include an order acceptable to both the Requestor and EPA, and shall be signed by all parties or their counsel or representatives. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.

§ 305.26 Prehearing conference.

(a) Purpose of prehearing conference. Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

1. The settlement of the case;
2. The simplification of issues and stipulation of facts not in dispute;
3. The necessity or desirability of amendments to the pleadings;
4. The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
5. The limitation of the number of expert or other witnesses;
6. Setting a time and place for the hearing; and
7. Any other matters which may expedite the disposition of the proceeding.

(b) Exchange of witness lists and documents. Unless otherwise ordered by the Presiding Officer, each party at the prehearing conference shall make available to all other parties: the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony; and copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.