

Subpart B—Rules of Practice for Most Cases

§ 134.201 Scope of the rules in this subpart B.

The rules in this subpart generally apply to all proceedings over which OHA has jurisdiction, except for appeals from size determinations and SIC code designations. Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act are set forth, respectively in subpart D of this part and part 142 of this chapter. In the case of a conflict between a particular rule in this subpart and a rule of procedure pertaining to OHA appearing in another subpart of this part or another part of this chapter, the latter rule shall govern.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

§ 134.202 Commencement of cases.

A case may be commenced by filing a written petition within the following time periods:

(a) Except as provided by paragraphs (b) through (d) of this section, no later than 45 days from the date of service of the SBA action or determination to which the petition relates;

(b) In debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(c) In applications for an award of fees pursuant to subpart E of this part, no later than 30 days after the decision to which it applies becomes final;

(d) For 8(a) program suspension proceedings, see § 134.305 of this chapter.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

§ 134.203 The petition.

(a) A petition must contain the following:

- (1) The basis of OHA's jurisdiction;
- (2) The SBA determination being appealed.
- (3) A clear and concise statement of the factual basis of the case;
- (4) The relief being sought; and

(5) The name, address, telephone number, and signature of the petitioner or its attorney.

(b) A petition which does not contain all of the information required by paragraph (a) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

§ 134.204 Service and filing requirements.

(a) *Service.* Each party is responsible for the service of its pleadings and other submissions upon all other parties or their attorneys. Unless otherwise ordered by the Judge, service is made by providing each party, or its attorney, with a copy of the pleading or other submission by personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. Service by mail must be directed as follows:

(1) To a party's last-known residence or business address if it has not yet appeared in the case, or to the address of a party which has appeared as shown in its submission;

(2) If a party has appeared in the case through an attorney, to the address of the attorney shown in the party's submission or in a notice of appearance;

(3) If SBA is the party, unless an attorney has been specified in SBA's submissions to OHA, by mailing to: Office of General Counsel, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

(b) *Filing.* (1) All pleadings and other submissions must be filed with OHA by personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. Filing may only be accomplished at the following address: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

(2) If filing is by personal delivery or commercial delivery service, such filing must be accomplished between the hours of 8:30 a.m. and 5:00 p.m. If filing is by facsimile transmission, the telephone number to be used may be obtained by calling OHA.

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(c) *Copies.* Only the original of a pleading or other submission must be filed with OHA. In the case of a document offered as evidence, an authenticated copy may be filed instead of the original.

(d) *Certificate of service.* A signed certificate stating how and when service was made on all parties must be attached to each pleading or other submission filed with OHA.

(e) *Date.* Unless otherwise specified by the Judge, the date of service or filing is as follows:

(1) If by facsimile transmission, the date of transmission.

(2) If by first-class mail, the date of postmark. Where the postmark is illegible or incomplete, there is a rebuttable presumption that the postmark was dated five days prior to the date of receipt.

(3) If by personal delivery, express mail, or commercial delivery service, the date of receipt.

(f) *Confidential information.* Any information in pleadings or other submissions that is believed by the submitting party to constitute proprietary or confidential information need not be served upon parties so long as the deletions are clearly identified and generally described in the documents which are served. Upon motion, the Judge may direct that the withheld information be provided to other parties, subject to any appropriate protective order.

§ 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 20 days after service of the petition or order to show cause, the respondent may serve and file a motion requesting a more definite statement of particular allegations in the petition.

(b) *Stay.* The serving and filing of a motion for a more definite statement stays the time for serving and filing an answer. The Judge will establish the time for serving and filing an answer.

§ 134.206 The answer.

(a) A respondent must serve and file an answer within 45 days after the service of a petition or order to show cause, except that debt collection proceeding answers are due within 30 days.

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(b) The answer must contain the following:

(1) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(2) Any affirmative defenses; and

(3) The name, address, telephone number, and signature of the respondent or its attorney.

(c) Allegations in the petition or order to show cause which are not answered in accordance with paragraph (b)(1) of this section will be deemed admitted unless injustice would occur.

(d) Upon an appeal from an SBA determination concerning the 8(a) program, SBA must serve and file the administrative record pertaining to that determination within the same time period applicable to the service and filing of its answer. If SBA fails to do so, the Judge will issue an order directing SBA to serve and file the administrative record by a specified date.

(e) If the respondent fails to serve and file an answer within the time period set forth in paragraph (a) of this section, or within any extended time period granted by the Judge, that failure will constitute a default. Following such a default, the respondent may be prohibited from participating further in the case, except to serve and file the administrative record in accordance with paragraph (d) of this section.

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of amendments to pleadings. However, an amendment will not be permitted if it would cause unreasonable delay in the determination of the matter.

(b) *Supplements.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading.