

### § 134.213

### 13 CFR Ch. I (1–1–04 Edition)

being appealed, SBA may move for summary decision on one or more grounds. If the Judge finds that there is no genuine issue of material fact and the SBA is entitled to a decision in its favor as a matter of law as to any such ground, the Judge will grant the motion for summary decision and dismiss the appeal.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47248, July 18, 2002]

#### § 134.213 Discovery.

(a) *Motion.* A party may obtain discovery only upon motion, and for good cause shown.

(b) *Forms.* The forms of discovery which a Judge can order under paragraph (a) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(c) *Limitations.* Discovery may be limited in accordance with the terms of a protective order. Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(d) *Disputes.* If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may file and serve a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance, undue burden or expense, privilege, or confidentiality.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998; 67 FR 47249, July 18, 2002]

#### § 134.214 Subpoenas.

(a) *Availability.* At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring a witness to appear and testify, or to produce particular documents, at a specified time and place. Subpoenas are not authorized for proceedings relating to internal Agency determinations, such as Employee Disputes.

(b) *Requests.* A request for the issuance of a subpoena must be written, served upon all parties, and filed. The request must clearly identify the witness and any documents to be subpoenaed, and must set forth the relevance of the testimony or documents sought.

(c) *Service.* A subpoena may only be served by personal delivery. The individual making service shall prepare an affidavit stating the date, time, and place of the service. The party which obtained the subpoena must serve upon all other parties, and file with OHA, a copy of the subpoena and affidavit of service within 2 days after service is made.

(d) *Motion to quash.* A motion to limit or quash a subpoena must be filed and served within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be filed and served within 10 days after service of the motion, unless a shorter time is specified by the Judge. No oral argument will be heard on the motion unless the Judge directs otherwise.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47249, July 18, 2002]

#### § 134.215 Interlocutory appeals.

(a) *General.* A motion for leave to take an interlocutory appeal from a Judge's ruling will not be entertained in those proceedings in which OHA issues final decisions. In all other cases, an interlocutory appeal will be permitted only if, upon motion by a party, or upon the Judge's own initiative, the Judge certifies that his or her ruling raises a question which is immediately appealable. Interlocutory appeals will be decided by the AA/OHA or a designee.

(b) *Motion for certification.* A party must file and serve a motion for certification no later than 20 days after issuance of the ruling to which the motion applies. A denial of the motion does not preclude objections to the ruling in any subsequent request for review of an initial decision.

(c) *Basis for certification.* The Judge will certify a ruling for interlocutory appeal only if he or she determines that:

(1) The ruling involves an important question of law or policy about which there is substantial ground for a difference of opinion; and

(2) An interlocutory appeal will materially expedite resolution of the case, or denial of an interlocutory appeal would cause undue hardship to a party.