

§ 134.220 Prohibition against ex parte communications.

No person shall consult or communicate with a Judge concerning any fact, question of law, or SBA policy relevant to the merits of a case before that Judge except on prior notice to all parties, and with the opportunity for all parties to participate. In the event of such prohibited consultation or communication, the Judge will disclose the occurrence in accordance with 5 U.S.C. 557(d)(1), and may impose such sanctions as he or she deems appropriate.

§ 134.221 Prehearing conferences.

Prior to a hearing, the Judge, at his or her own initiative, or upon the motion of any party, may direct the parties or their attorneys to appear, by telephone or in person, in order to consider any matter which may assist in the efficient, prompt, and fair determination of the case. The conference may be recorded verbatim at the discretion of the Judge, and, if so, a party may purchase a transcript, at its own expense, from the recording service.

§ 134.222 Oral hearing.

(a) *Availability.* A party may obtain an oral hearing only if:

- (1) It is required by regulation; or
- (2) Following the motion of a party, or at his or her own initiative, the Judge orders an oral hearing upon concluding that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses.

(b) *Place and time.* The place and time of oral hearings is within the discretion of the Judge, who shall give due regard to the necessity and convenience of the parties, their attorneys, and witnesses. The Judge may direct that an oral hearing be conducted by telephone.

(c) *Public access.* Unless otherwise ordered by the Judge, all oral hearings are public.

(d) *Payment of subpoenaed witnesses.* A party which obtains a witness' presence at an oral hearing by subpoena, must pay to that witness the fees and mileage costs to which the witness would be entitled in Federal Court.

(e) *Recording.* Oral hearings will be recorded verbatim. A transcript of a recording may be purchased by a party, at its own expense, from the recording service.

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

§ 134.223 Evidence.

(a) *Federal Rules of Evidence.* Unless contrary to a particular rule in this part, or an order of the Judge, the Federal Rules of Evidence will be used as a general guide in all cases before OHA.

(b) *Hearsay.* Hearsay evidence is admissible if it is deemed by the Judge to be relevant and reliable.

§ 134.224 Standards for decision.

The decision of a Judge will be based upon a preponderance of the evidence.

§ 134.225 The record.

(a) *Contents.* The record of a case before OHA will consist of all pleadings, motions, and other non-evidentiary submissions, all admitted evidence, all orders and decisions, and any transcripts of proceedings in the case.

(b) *Public access.* Except for information subject to a protective order, proprietary or confidential information withheld in accordance with this part, or any other information which is excluded from disclosure by law or regulation, the record will be available at OHA for public inspection during normal business hours. Copies of the documents available for public inspection may be obtained by the public upon payment of any duplication charges.

(c) *Closure.* The Judge will set the date upon which the pre-decisional record of the case will be closed, and after which no additional evidence or argument will be accepted.

§ 134.226 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of relevant law, reasons for such findings and conclusions, and any relief ordered. The contents of the record will constitute the exclusive basis for a decision.

(b) *Time limits.* Decisions pertaining to the collection of debts owed to SBA

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and the United States under the Debt Collection Act of 1982 and part 140 of this chapter must be rendered within 60 days after a petition is filed.

(c) *Service.* OHA will serve a copy of all written decisions on:

- (1) Each party, or, if represented by counsel, on its counsel; and
- (2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.227 Finality of decisions.

(a) *Final decisions.* A decision on the merits shall be a final decision, upon issuance, in proceedings concerning the collection of debts owed to SBA and the United States, under the Debt Collection Act of 1982 and part 140 of this chapter.

(b) *Initial decisions.* All decisions on the merits other than those set forth in paragraph (a) of this section are initial decisions. However, unless a request for review is filed pursuant to § 134.228(a), an initial decision shall become the final decision of SBA 30 days after its issuance.

§ 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision, any party, or SBA's Office of General Counsel, may serve and file with OHA a request for review. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

(b) *Response.* Within 20 days after the service of a request for review, any party, or SBA's Office of General Counsel, may serve and file with OHA a response. A party must serve its response upon all other parties and upon SBA's Office of General Counsel.

(c) *Transfer of the record.* Upon receipt of all responses, or 30 days after the filing of a request for review, whichever is earlier, OHA will transfer the record of the case to the Administrator. The Administrator, or his or her designee, will then review the record.

(d) *Standard of review.* Upon review, the Administrator, or his or her designee, will sustain the initial decision

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unless it is based on an erroneous finding of fact or an erroneous interpretation or application of case law, statute, regulation, or SBA policy.

(e) *Order.* The Administrator, or his or her designee, will:

- (1) Affirm, reverse, or modify the initial decision, which determination will become the final decision of the SBA upon issuance; or
- (2) Remand the initial decision to the Judge for appropriate further proceedings.

§ 134.229 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision by a Judge resolving all material issues of fact and law unless the case is subsequently remanded for appropriate further proceedings, pursuant to § 134.228(e)(2).

Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

§ 134.301 Scope of the rules in this subpart C.

The rules of practice in this subpart C apply to all appeals to OHA from:

- (a) Formal size determinations made by an SBA Government Contracting Area Office, under part 121 of this chapter, or by a Disaster Area Office, in connection with applications for disaster loans; and
- (b) SIC code designations, pursuant to part 121 of this chapter.

§ 134.302 Who may appeal.

Appeals from size determinations and SIC code designations may be filed with OHA by the following, as applicable:

- (a) Any person adversely affected by a size determination;
- (b) Any person adversely affected by a SIC code designation. However, with respect to an 8(a) contract, only the Associate Administrator for Minority Enterprise Development may appeal a SIC code designation;
- (c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; or