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

(d) *Format.* (1) An appeal petition should be on 8.5" × 11" paper with a clear type at least 12 point in size. Preferably, double-space the main text and use 1" margins all around. Number each page. A separate cover letter is not needed. A table of contents is optional. Hard copies of documents sent by facsimile or electronic mail are not needed unless specifically requested.

(2) The maximum length of an appeal petition (not including attachments) is 20 pages, unless prior leave is sought by the petitioner and granted by the Judge. A table of authorities is required only for petitions citing more than twenty cases, regulations, or statutes.

(3) Clearly label any exhibits and attachments. Do not include documents already submitted to SBA in connection with the matter being appealed. SBA will submit these directly to OHA.

(e) *Motion for a more definite appeal petition.* A respondent, SBA, or a contracting officer (for NAICS appeals) may, not later than five days after receiving a petition, move for an order to the petitioner to provide a more definite appeal petition or otherwise comply with this section. A Judge may order a more definite appeal petition on his or her own initiative.

(1) A motion for a more definite appeal petition stays the respondent's time for filing an answer or response. The Judge will establish the time for filing and serving an answer or response.

(2) If the petitioner does not comply with the Judge's order to provide a more definite appeal petition or otherwise fails to comply with applicable regulations, the Judge may dismiss the petition with prejudice.

(f) *Notice and Order.* After an appeal petition is filed, OHA will issue a Notice and Order and serve it upon all known parties (or their attorneys). If a party does not receive a Notice and Order, it should contact OHA.

[67 FR 47247, July 18, 2002, as amended at 75 FR 47439, Aug. 6, 2010]

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§ 134.204 Filing and service requirements.

All pleadings or other submissions must be filed with OHA and served on all other parties or their attorneys. Each submission requires a certificate of service.

(a) *Methods of filing and service.* E-mail, mail, delivery, and facsimile are all permitted unless a Judge orders otherwise.

(1) E-mail constitutes any system for sending and receiving messages electronically over a telecommunications network. The sender is responsible for ensuring that e-mail software and file formats are compatible with the recipient and for a successful, virus-free transmission.

(2) Mail includes any service provided by the U.S. Postal Service. Mail (except "Express Mail") is not recommended for time-sensitive filings.

(3) Delivery is personal delivery by a party, its employee, its attorney, or a commercial delivery service.

(4) Facsimile submissions should not exceed 30 pages. Contact OHA before faxing longer submissions. Follow-up originals or "hard copies" are not required unless OHA or another party specifically requests them.

(b) *Filing.* Filing is the receipt of pleadings and other submissions at OHA. Filers may call OHA to verify receipt. OHA's telephone number is (202) 401-8200.

(1) *OHA's address.* OHA accepts filings: by e-mail at OHAFilings@sba.gov; by mail or delivery at Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; and by facsimile at (202) 205-7059.

(2) The date of filing is the date the submission is received at OHA. Any submission received at OHA after 5 p.m. eastern time is considered filed the next business day.

(3) *Exhibits.* An exhibit, whether an original or a copy, must be authenticated or identified to be what it purports to be. Parties are referred to 28 U.S.C. 1746.

(4) *Copies.* No extra copies of pleadings or other submissions need be filed. If a document is offered as an exhibit, a copy of the document will be accepted by the Judge unless—

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(i) a genuine question is raised as to whether it is a true and accurate copy; or

(ii) it would be unfair, under the circumstances, to admit the copy instead of the original.

(c) *Service.* Service means sending a copy of a pleading or other submission filed with OHA to another party.

(1) Complete copies of all pleadings and other submissions filed with OHA must be served upon all other parties or, if represented, their attorneys, at their record addresses.

(2) The date of service is as follows: for e-mail and facsimile, the date the copy is sent; for personal delivery, the date the copy is given to the party, its attorney, or the commercial delivery service (if one is used). For mail, date of service is postmark date; in absence of a legible postmark, there is a rebuttable presumption that the copy was mailed five days before the served party's receipt.

(3) *SBA address.* The correct office(s) of SBA must be served, as required by the applicable program regulations, by other subparts of part 134, or by the instructions on the SBA determination being appealed. If the SBA office for service is not specified elsewhere, serve: Office of General Counsel, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

(4) *Confidential information.* If a pleading or other submission contains proprietary or confidential information, that information may be redacted (deleted) from any copies served upon non-government parties. Counsel for those parties may access the redacted information only under the protective order procedure described in § 134.205.

(d) *Certificate of service.* A certificate of service shows how, when, and to whom service was made. Each submission to OHA must include a certificate of service. The certificate should state: "I certify that on [date], I served the foregoing [type of submission] by [e-mail, mail, Express Mail, personal delivery, commercial delivery service, facsimile] upon the following". List the name and address of each party served, and either the facsimile number or the e-mail address (if applicable). The individual serving the sub-

mission must sign the certificate and either print or type his or her name and title.

[75 FR 47439, Aug. 6, 2010]

§ 134.205 The appeal file, confidential information, and protective orders.

(a) *The appeal file.* The appeal file includes: all pleadings and other submissions; all admitted evidence; any recordings and transcripts of proceedings; the solicitation and amendments; in the case of an appeal of an SBA determination, the entire record on which that determination was based (*i.e.*, the administrative record, protest file, area office file); and any orders and decisions that have been issued.

(b) *Confidential business and financial information.* An appeal file usually contains confidential business and financial information pertaining to the party whose eligibility (as a small business, SDVO SBIC, etc.) is at issue. A party may redact its own confidential business and financial information from the copies of its submissions it must serve on other non-government parties (usually protesters). A party served with redacted submissions must file and serve any objections to the redactions within two business days of its receipt of the submissions. The Judge then will rule on the objections and, if necessary, order the service of revised submissions.

(c) *Public access.* Except for confidential business and financial information, source selection sensitive information, income tax returns, and other exempt information, the appeal file is available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(d) *Party access.* A party in a pending appeal may examine and copy the party's own submissions as well as any information in the appeal file that is not exempt from disclosure under the FOIA. Party access to the appeal file in a pending appeal does not require a FOIA request or a protective order.

(e) *Counsel's access under a protective order.* On request, OHA will issue a protective order under which outside counsel for a non-government party in a pending appeal may be admitted, to examine and copy the appeal file (except for tax returns and privileged information). The protective order will