

this paragraph, the term "person" means a person as defined in Part 719 of this chapter, including any: Governmental entity; public utility; educational institution; or religious institution, but not including any: Individual; partnership; joint venture; family farm corporation; trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and marketing quota for instructional or demonstrational purposes.

(1) *Required forfeiture.* If at any time the county ASC committee determines that any person which owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before:

(i) *Farm owned or acquired before January 1, 1983.* December 1, 1984;

(ii) *Farm acquired on or after January 1, 1983.* December 1 of the year after the year in which the farm is acquired; or

(iii) *Owner ceases to be significantly involved.* December 1 of the year after any year for which the county ASC committee determines that such person which was previously determined to be significantly involved in the management or use of land for agricultural purposes is no longer significantly involved in the management or use of land for agricultural purposes.

(c) ***
(5) *Owner disposes of or changes status of tillable cropland.* July 1 of the year after any year in which the farm owner disposes of an acreage of tillable cropland or changes the status of land in the farm so as to cause such land to lose its tillable cropland status.

(e) *Tobacco not planted or considered planted in 1983 and subsequent years.*

Notwithstanding any other provision of this Part, any person which, on or after January 1, 1986, owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established shall forfeit such allotment and quota after February 15 of any year immediately following the last year of the three-year period immediately preceding the year for which the county committee determines that flue-cured tobacco was not planted or considered planted on such farm during at least two years of such three-year period.

(f) ***

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county committee, as to whether:

(i) Any of the conditions requiring forfeiture as specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

8. In § 725.95, paragraph (b) is revised to read as follows:

§ 725.95 Producers penalties; false identifications; failure to account; canceled allotments; overmarketing proportionate shares.

(b) *Penalties for false identification or failure to account.* (1) If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, a penalty at the full rate shall be assessed based on the larger of:

(i) The actual marketings above 110 percent of the effective farm marketing quota; or

(ii) The sum of pounds equal to 25 percent of the effective farm marketing quota plus the pounds determined by multiplying the farm yield times the acres harvested in excess of the effective farm acreage allotment: *Provided, however,* That if such amount exceeds the amount determined in accordance with paragraph (b)(1)(i) of this section, the penalty assessed may be based on the amount determined in accordance with paragraph (b)(1)(i) of this section if the county committee determines, with concurrence of the State committee, that the penalty assessed on the amount determined in accordance with paragraph (b)(1)(ii) of this section would be unduly harsh in relation to the quantity of tobacco which is falsely identified or which is not accounted for and the tobacco program would not be adversely affected.

§ 725.98 [Amended]

9. In § 725.98, paragraph (a) is amended by removing the reference "(b)" in the last sentence and inserting in its place the reference "(g)".

Signed at Washington, D.C., on August 13, 1984.

C. Hoke Leggett,

Acting Administrator, Agricultural Stabilization and Conservation Service.

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BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 478]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 243,255 cartons during the period August 26-September 1, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 26, 1984.

FOR FURTHER INFORMATION CONTACT:

William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on August 21, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand continues steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register

(5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of this Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.778 is added as follows:

§ 910.778 Lemon Regulation 478.

The quantity of lemons grown in California and Arizona which may be handled during the period August 26, 1984, through September 1, 1984, is established at 243,255 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: August 22, 1984.

Thomas R. Clark,

*Acting Director, Fruit and Vegetable Division,
Agricultural Marketing Service.*

[FR Doc. 84-22720 Filed 8-23-84; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 103, 104, 105, 108, 109, 110, 112, 113, 115, 120, 122, 124, 132, and 134

Procedures for the Office of Hearings and Appeals for Deciding Cases Other Than Size Appeals

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is promulgating a single, comprehensive set of procedural rules for processing and deciding all cases within the jurisdiction of the Office of Hearings and Appeals other than appeals from size determinations and product or service classifications. Matters to be adjudicated in accordance with these procedural rules include proceedings concerning small business investment company licensees, section 8(a) program participants, lender participants in SBA loan programs, debarments and suspensions, surety bond program participants, sections 501, 502 and 503 development companies, violations of Title VI of the Civil Rights

Act of 1964 and employee grievances. The rules cover pleading requirements, time limits, discovery, evidence and other procedural matters and will supplant procedural rules scattered throughout Title 13 that presently govern various types of cases.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT:

Roger H. Jones, Assistant Administrator, Office of Hearings and Appeals, Small Business Administration, 1441 L Street, NW., Washington, DC 20416, (202) 653-6805.

SUPPLEMENTARY INFORMATION:

On August 6, 1982 the Administrator of the Small Business Administration (SBA) implemented a decision by a predecessor to establish an SBA Office of Hearings and Appeals (OHA) for the purpose of consolidating the agency's adjudicative decision-making functions in a forum that would provide maximum efficiency and fairness to participants. On June 27, 1983, the Administrator delegated to OHA authority to process and adjudicate a wide variety of cases ranging from internal SBA matters such as formal employee grievances, to cases required by law to be heard on the record in accordance with the Administrative Procedure Act (APA), the Small Business Act or the Small Business Investment Act of 1958. 48 FR 29646. The matters delegated to OHA had previously been handled by SBA hearing examiners or other SBA decisional authorities, or had been assigned to Administrative Law Judges from other agencies.

On December 16, 1983, OHA published final procedural rules for considering and deciding appeals from size determinations and from product or service classifications. 48 FR 55832. These rules were recodified in the context of major revisions to the size standards effective March 12, 1984. 49 FR 5024. The size rules are contained in Part 121 and differ significantly in some respects from those now being promulgated because of the procedural history and nature of size cases and time constraints peculiar to the procurement process.

The rules now being promulgated constitute a single, comprehensive set of procedures for processing and deciding all cases within the jurisdiction of OHA, other than size cases. These rules cover pleading requirements, time limits, representation of respondents before SBA, discovery, and other procedural aspects of cases to be adjudicated by OHA. They supplant procedural rules scattered throughout Title 13 that presently govern the processing of various specific kinds of cases.

These final rules differ only slightly from those contained in the Notice of Proposed Rulemaking issued May 8, 1984. 49 FR 19530. Only one public comment was received in response to that notice. The comment expressed approval of the rules as proposed but argued, based on an erroneous reading of the proposed rules, that the Administrator, rather than the program official, should review OHA decisions concerning small business investment companies (SBICs). It should be noted that § 134.32(b), references the substantive rules in Part 110 governing SBICs, and thereby provides for review by the Administrator of an OHA decision in an SBIC proceeding.

The agency itself has undertaken three amendments to the rules as proposed. In accordance with amendments to SBA's Standard Operating Procedure 37-71, the reviewing official, rather than OHA, will issue a final decision on a MAC appeal, after reviewing the decision made by the Performance Review Board. OHA will no longer be involved in the MAC review process. In addition, changes have been made in §§ 134.14(b) and 134.15 concerning the service and form requirements for pleadings. Under the proposed rules all pleadings were required to be affirmed. However, under the final rule, the affirmation set forth in § 134.15 will be required only for petitions, orders to show cause (other than those signed by the Administrator), answers, interrogatories and answers to interrogatories. Furthermore, whereas the proposed rules required that copies of pleadings not personally delivered to other parties to the proceeding be mailed registered or certified, return receipt requested, § 134.14(b) of the final rules merely requires that a copy be mailed, first class postage prepaid, unless the judge orders otherwise. (However, requests for subpoenas will still require the affirmation, and the subpoena must either be personally served or sent by certified mail.)

Both the proposed and final rules recognize the adjudicative nature of the decisionmaking process undertaken by OHA, and specific provisions have been incorporated into the rules to ensure the reliability, comprehensiveness, and integrity of the record upon which decisions will be made. In order to ensure that the record is reliable and complete, the OHA judge to whom a case is assigned has been granted broad judicial powers including the power to administer oaths, to order discovery and issue subpoenas, and to conduct oral hearings or telephone conferences when warranted because of a genuine dispute

regarding a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. In addition, the previously identified written submission must be affirmed, and all pleadings must be either personally delivered or mailed first class to all parties to the proceeding, including those granted intervenor status. This latter requirement will provide all parties the maximum feasible opportunity to participate in the development of the record. The regulations provide for the integrity of the record by requiring that the decision be based only on information contained in the record, such as the petition, all other pleadings and motions, the judge's orders and decisions, and any evidence admitted during the course of the proceeding. The regulations also prohibit *ex parte* communications between the judge and any person, party, or employee of SBA who performs any investigatory or prosecutorial function in connection with the proceeding, concerning any fact or question of law or SBA precedent at issue in the proceeding, except on notice and opportunity for all parties to participate.

Procedural rules presently applicable to the various types of cases assigned to OHA and scattered throughout Title 13 are being deleted or amended to conform to the procedural rules in Part 134. In some instances, application of the new rules will represent a substantial departure from previous practice. However, § 134.1, which articulates the policy to be followed in implementing the rules, emphasizes that not all types of cases handled by OHA will require use of the full panoply of formalities available under the proposed rules. Section 134.1 distinguishes among three general categories of cases to be adjudicated under the rules: Cases required by law to be heard on the record; non-APA cases involving constituents or institutions cooperating with or regulated by SBA, and internal SBA matters. Whereas the full range of formalities will usually apply in APA cases, lesser degree of formality will normally apply to non-APA external cases. A presumption in favor of informality will exist in cases involving internal SBA matters. Variations in the degree of formality provided are anticipated to occur most frequently regarding provision for oral hearings and discovery. The general policy set forth in § 134.1 is intended to provide guidance to the judge and to all parties while maintaining that measure of flexibility necessary to accommodating differences that will inevitably arise

with respect to cases within the three identified categories.

The following discussion identifies and explains key provisions in the rules of practice and procedure in Part 134. Sections 134.3 and 134.32, respectively, set forth the types of cases to which the procedures established in Part 134 are intended to apply and the nature of the decision to be rendered by the judge in each type of case. The decision of the judge will be final in arbitrations arising under labor agreements, in proceedings pertaining to collection of debts owed to the agency, and in formal employee grievances unless the deciding official seeks review by the Deputy Administrator. The judge will render an initial decision, which will be subject to review by the proper SBA reviewing official, in proceedings concerning SBIC licensees, terminations of participants in the section 8(a) program, violations of Title VI of the Civil Rights Act of 1964 and similar violations, debarments of applicants or agents appearing before SBA, post-employment restrictions, bank or nonbank lenders involved in SBA loan programs, terminations of surety bond program participants, sections 501, 502, and 503 development companies, and allowances of costs and fees under the Equal Access to Justice Act. In contract debarment and suspension proceedings, the judge will issue a recommended decision to the proper SBA reviewing official who will review it prior to issuing a final decision in the case.

Section 134.11 states that a proceeding may be commenced by either an order to show cause or a notice filed by SBA or a petition filed by a party other than SBA. It also specifies the content of such filings and the applicable time limits, and permits a respondent to file a motion for a more definite statement upon showing that he or she cannot frame an answer based on the allegations contained in the petition, order to show cause or notice. Section 134.12 contains the rules for filing answers to petitions, orders to show cause or notices; § 134.13 provides for the filing of amended and supplemental pleadings; and § 134.21 contains general rules applicable to motions. Certain specified written submissions filed during the course of a proceeding must be affirmed by an authorized person in accordance with § 134.15, and an original and one copy of all pleadings must be filed with OHA within the time limits specified, pursuant to § 134.14(a). Pursuant to § 134.14 (b) and (c), copies of all submissions must be either personally delivered or mailed first class to all other parties to the proceeding,

and may be excised of any confidential information. In most instances, the time period imposed for filing a responsive submission will commence with the mailing or personal delivery of the filing to which it applies, pursuant to § 134.14(b) and the applicable sections authorizing the filing, most of which compute time based on the date of mailing. However, the time period applicable to a submission concerning an order or decision issued by the judge and served on the parties by OHA will normally commence on the date of issuance. The timeliness of the filing in either situation will be determined by the date of the filing is received by OHA, pursuant to § 134.14(a).

Proceedings subject to the requirements of the APA will be conducted by an Administrative Law Judge in OHA, as required by § 134.18(a). All other proceedings covered by Part 134 may be conducted by an OHA Administrative Judge. Part 134 confers a broad range of judicial powers upon the judge, many of which are enumerated in § 134.18(b). They include authority to grant discovery and to provide for oral hearings, where appropriate, as well as authority to rule upon motions for intervention pursuant to § 134.17, motions for interlocutory appeals pursuant to § 134.23, and settlement agreements made pursuant to § 134.37. In order to assure a complete record, the judge will also have the authority, where appropriate, to issue subpoenas requiring the appearance of witnesses or the production of documents. These subpoenas may be enforced in the District Court or by the imposition of sanctions available to the judge under § 134.27. In exercising these powers, the judge will be governed by the implementation policy set forth in § 134.1. Although Part 134 establishes comprehensive procedures for the conduct of cases to be decided by OHA, some flexibility will be necessary, and § 134.4 permits the judge, upon his or her own initiative or upon motion of a party, to waive any rule contained in Part 134 in the exercise of discretion, for good cause shown, except those rules in § 134.11(a) specifying the time limits for filing a petition to commence a proceeding.

Section 134.28 contains evidentiary rules relating to objections, stipulations, exhibits, and offers of proof and provides that the Federal Rules of Evidence will be used as a general guide in all proceedings. As §§ 134.29 and 134.33 indicate, evidence considered in rendering a decision will be limited to that admitted during the course of the proceeding, and, once closed, the record

will not be reopened unless the judge grants a motion, made within 30 days of issuance of the judge's decision, for the purpose of considering new and previously unavailable material evidence of decisional significance.

Sections 134.29 and 134.31 require that the decision issued by the judge be predicated only on the record, which will include all pleadings, judge's orders and decisions, evidence admitted during the proceeding, and the record of any oral hearing or telephone conference conducted during the proceeding. Where the decision is based on official notice of a material fact not appearing in the record, any party will have the opportunity, upon a timely request, to show the contrary. In aid of a decision, the judge may request proposed findings of fact and conclusions of law, and, in the event of noncompliance with such an order, the defaulting party will be barred from objecting to the findings and conclusions adopted by the judge. Sections 134.18 (d) and (e) and 134.38 contemplate an independent and impartial decision in each case by assuring that the judge will be free from interference by the agency or a party in rendering a decision, by prohibiting *ex parte* contacts on factual or legal issues, and by providing for recusal of a judge based on personal bias or disqualification. Section 134.34 establishes the rules for review of initial decisions, and § 134.35 governs final agency decisions where the judge has issued a recommended decision in the proceeding.

Because the rules in Part 134 are intended to produce a reliable and complete record in all cases, it is essential that the parties have access to all submissions made during the course of the proceeding. Nevertheless, SBA is mindful that public access or even limited party access to certain confidential or proprietary information may be detrimental to the party submitting it. Thus § 134.14(c) permits excision of such information prior to delivery or mailing of copies to other parties, if the information is adequately identified and described with sufficient particularity to permit another party to frame an adequate motion seeking its release, with or without a protective order. A protective order may also be sought if such information is introduced during the course of an oral hearing. Section 134.29(a) provides that public access will be granted to all information upon which a decision is based except information subject to a protective order issued pursuant to § 134.18(c) or any proprietary or confidential information properly excised under the standards

established by the Freedom of Information or Privacy Act by either a private party of SBA. The public will also be permitted to attend any oral hearings conducted by OHA except formal employee grievances or proceedings that are closed by the judge for good cause shown, pursuant to § 134.19(e).

Parts 103, 104, 105, 108, 109, 110, 112, 113, 115, 120, 122, 124, and 132 of Title 13 presently contain specific procedural regulations pertaining to certain of the above-enumerated types of cases, and amendments to these parts are also being promulgated in order to conform them to the new procedures in Part 134.

SBA hereby certifies that these regulations are procedural in nature and do not constitute major regulations for the purpose of Executive Order 12291. In addition, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these regulations would not have a significant economic impact on a substantial number of small entities.

There are no Reporting or Recordkeeping Requirements subject to OMB approval in this Rule.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Organization and function (government agencies).

PART 103—[AMENDED]

Accordingly, pursuant to 15 U.S.C. 634(b)(7), SBA hereby amends Chapter 1 of 13 CFR by adding Part 134, and by removing or revising various sections of Chapter 1 to conform to the text of new Part 134, as follows:

1. These conforming amendments are made to the following sections of Chapter 1 of 13 CFR:

§ 103.13-4 [Amended]

(a) Section 103.13-4 is amended by removing the reference to "Part 104" and substituting "Part 134" in lieu thereof, and is further amended by adding the following at the end thereof: "The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 104—[REMOVED]

(b) Part 104 is removed in its entirety and reserved.

PART 105—[AMENDED]

§ 105.407 [Amended]

(c) Section 105.407 is amended by adding the following at the end of paragraph (a): "SBA administrative

proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34." Section 105 is further amended by removing paragraphs (d) through (j) in their entirety.

PART 108—[AMENDED]

§ 108.502-1 [Amended]

(d) Section 108.502-1 is amended in paragraph (k)(2) by inserting the following at the end of the first sentence: "and Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

§ 108.503-8 [Amended]

(e) Section 108.503-8 is amended by removing paragraphs (b) through (i), by deleting the identifier "(a)" and by adding the following at the end of the text of former paragraph (a): "Proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 109—[REMOVED]

(f) Part 109 is removed in its entirety and reserved.

PART 110—[AMENDED]

§ 110.1 [Amended]

(g) Section 110.1 is amended by adding the following at the end of the first full sentence in paragraph (b): "Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34. The respondent's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134."

§ 110.4 [Amended]

(h) Section 110.4 is amended by removing the reference to "Part 104" and substituting "Part 134" in lieu thereof.

§ 110.6 [Amended]

(i) Section 110.6 is amended by removing the reference to "§§ 109.16(c) and 109.26(a)" and substituting "§ 134.25(c)" in lieu thereof.

PART 112—[AMENDED]**§ 112.11 [Amended]**

(j) Section 112.11 is amended by adding the following at the end of paragraph (b): "Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34. The applicant's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134." Section 112.11 is further amended in paragraph (c)(2) by inserting the words "an oral" between "for" and "hearing" and in paragraph (c)(3) by removing the words "action has been approved by the Administrator of SBA pursuant to § 112.13" and substituting the following in lieu thereof: "initial decision has become final pursuant to § 134.32(b)."

§§ 112.12-112.14 [Removed]**§ 112.15 [Redesignated as] § 112.12**

(k) Sections 112.12 through 112.14 are removed in their entirety. § 112.15 is redesignated as § 112.12, and the table of contents in Part 112 is amended accordingly.

PART 113—[AMENDED]**§ 113.7 [Amended]**

(l) Section 113.7 is amended by adding the following at the end of paragraph (b): "Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34. The applicant's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing,

shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134." Section 113.7 is further amended in paragraph (c)(2) by inserting the words "an oral" between "for" and "hearing" and in paragraph (c)(3) by removing the words "action has been approved by the Administrator of SBA pursuant to § 113.9" and substituting the following in lieu thereof: "initial decision has become final pursuant to § 134.32(b)."

§§ 113.8 and 113.9 [Removed]**§ 113.10 [Redesignated as] § 113.8**

(m) Sections 113.8 and 113.9 are removed in their entirety. § 113.10 is redesignated as § 113.8, and the table of contents in Part 113 is amended accordingly.

PART 115—[AMENDED]**§ 115.13 [Amended]**

(n) Section 115.13 is amended by removing the last sentence and substituting the following in lieu thereof: "Any surety that has been penalized may file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

§ 115.14 [Amended]

(o) Section 115.14 is amended in paragraph (a) by removing the words "appeal such action to SBA's Associate Administrator for Investment" and substituting the following in lieu thereof: "file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such appeal shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 120—[AMENDED]**§ 120.4 [Amended]**

(p) Section 120.4 is amended in paragraph (d) by removing the words "suspension or revocation shall be accomplished in the manner set forth below" and subsequent paragraphs (1) through (7) and substituting the following in lieu thereof: "Proceedings

for such purpose shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34." Section 120.4 is further amended by removing paragraph (g).

PART 122—[AMENDED]**§ 122.2 [Amended]**

(q) Section 122.2 is amended by removing the third sentence in paragraph (d)(3) and substituting the following in lieu thereof: "Proceedings concerning such allegations shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 124—[AMENDED]**§ 124.1-1 [Amended]**

(r) Section 124.1-1 is amended by removing the first sentence in paragraph (d)(4) and is amended in paragraph (d)(3) by inserting the word "oral" between "a" and "hearing", and by deleting the last sentence and substituting the following in lieu thereof: "Proceedings concerning program completion shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Associate Administrator of the Office of Minority Small Business and Capital Ownership Development shall be the reviewing official for purposes of § 134.34. The concern's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134."

(s) Section 124.1-1 is further amended by removing paragraph (e)(3) and is amended in paragraph (e)(2) by inserting the word "oral" between "a" and "hearing" and by removing the last sentence and substituting the following in lieu thereof: "Proceedings concerning program termination shall be conducted in accordance with the provisions of Part 134 of this Chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The

Associate Administrator of the Office of Minority Small Business and Capital Ownership Development shall be the reviewing official for purposes of § 134.34. The concern's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134."

§ 124.10 [Amended]

(t) Section 124.10, including §§ 124.10-1 through 124.10-25, is removed in its entirety, and the table of contents in Part 124 is amended accordingly.

PART 132—[AMENDED]

§ 132.302 [Amended]

(u) Section 132.302 is amended in paragraph (c) by inserting the word "not" between "shall" and "be" and by adding the following at the end thereof: "and may be excised from pleadings required to be served on all other parties to the proceeding in accordance with § 134.14(b) of this chapter."

§ 132.401 [Amended]

(v) Section 132.401 is amended by removing the text in its entirety and substituting the following in lieu thereof: "All applications for an award of fees shall be filed in accordance with § 134.11(a) of this chapter. Service of such application shall commence the proceeding which shall thereafter be conducted in accordance with the provisions of Part 134 by the adjudicative officer (*i.e.*, an Administrative Law Judge of the Office of Hearings and Appeals), who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34."

§ 132.402 [Amended]

(w) Section 132.402 is amended by removing the second sentence of paragraph (a) and substituting the following in lieu thereof: "This Agency does not have the power to allow exceptions for later filings, and thus the applicant must serve and file the application no later than 30 days after the Agency decision becomes final in accordance with § 134.32 of this chapter." Section 132.402 is further amended in paragraph (b) by removing the words "of one of the types specified in paragraphs (a) (1) through (3) of this section."

§§ 132.403-132.407 and 132.409 [Removed]

§§ 132.408 and 132.410 [Redesignated as] §§ 132.403 and 132.404

§ 132.403 [Amended]

(x) Sections 132.403 through 132.407 and § 132.409 are removed in their entirety, § 132.408 is redesignated as § 132.403, and § 132.410 is redesignated as § 132.404, and the table of contents in Part 134 is amended accordingly. Section 132.408 is further amended by removing the first two sentences therein.

2. The Table of Contents to 13 CFR Chapter 1 is amended by adding the following:

PART 134—OFFICE OF HEARINGS AND APPEALS

3. Chapter 1 is further amended by adding the following part 134:

PART 134—OFFICE OF HEARINGS AND APPEALS

Subpart A—General

Sec.

- 134.1 Authority and implementation policy.
- 134.2 Definitions and miscellaneous rules.
- 134.3 Jurisdiction and function.
- 134.4 Waiver and interpretation of rules.

Subpart B—Rules of Practice

- 134.10 Applicability.
- 134.11 Commencement of proceedings.
- 134.12 Answer.
- 134.13 Amendments and supplemental pleadings.
- 134.14 Filing and service of pleadings.
- 134.15 Form requirements for pleadings.
- 134.16 Appearances.
- 134.17 Intervention.
- 134.18 Judges.
- 134.19 Oral hearings.
- 134.20 Prehearing conferences.
- 134.21 Motions.
- 134.22 Summary decision.
- 134.23 Interlocutory appeals.
- 134.24 Discovery.
- 134.25 Subpoenas.
- 134.26 Motions to compel.
- 134.27 Sanctions.
- 134.28 Evidence.
- 134.29 Record.
- 134.30 Proposed findings, conclusions, and order.
- 134.31 Contents of decisions.
- 134.32 Finality of decisions.
- 134.33 Requests to reopen record.
- 134.34 Petition for review of initial decision.
- 134.35 Recommended decisions.
- 134.36 Termination of jurisdiction.
- 134.37 Settlements.
- 134.38 *Ex Parte* communications.

Authority: 15 U.S.C. 634(b)(7).

Subpart A—General

§ 134.1 Authority and implementation policy.

(a) The Office of Hearings and Appeals is established pursuant to the authority set forth in the Small Business Act, 15 U.S.C. 631 *et seq.*, as implemented in § 101.2-8 of this chapter. Delegations of Authority by the Administrator to the Assistant Administrator for the Office of Hearings and Appeals are set forth in 48 FR 29646 (June 27, 1983).

(b) The regulations in this Part represent a single, consolidated set of rules governing the conduct of all proceedings within the jurisdiction of the Office of Hearings and Appeals, except size determination and product or service classification appeals. The size determination and product or service classification appeals are governed by the rules set forth in § 121.11 of this chapter. Because the rules in this part govern the conduct of a wide range of proceedings extending from internal Agency matters involving Small Business Administration employees to external matters involving constituents of the Agency or organizations cooperating with or regulated by the Agency, they are necessarily comprehensive in scope. They provide for a range of practice extending from the informal to the formal. It is specifically recognized and contemplated that not all of these rules will be applied in all types of cases.

(c) The full panoply of formalities will be available, as appropriate, in individual cases required by law to be heard on the record in accordance with the Administrative Procedure Act (APA), the Small Business Act, as amended, the Small Business Investment Act of 1958, as amended, and any other applicable statutes. In these cases, the Administrative Law Judge will determine the extent of such formalities that is appropriate upon consideration of the issues and nature of the case and the attendant requirements of due process of law. Of course, the legitimate needs of the parties will also be considered in this respect.

(d) In cases involving external parties, but which are not required to be heard on the record in accordance with the APA and other applicable statutes, a lesser degree of formality will normally be deemed to be appropriate. The Administrative Judge assigned will determine the extent of such formalities upon consideration of the issues and nature of the case, the due process requirements and the legitimate needs of the parties.

(e) In cases involving internal Agency matters, there is a presumption in favor of such informality as may best achieve essential fairness to all parties without undue resort to the formality that may be appropriate in certain of the external cases. The Administrative Judge assigned will determine which procedures in these cases will best meet the requirements of fairness, and will retain authority to resort to appropriate formality in cases in which the due process requirements, fairness, and the needs of the parties warrant such action.

(f) The principal areas where variation in practice is expected to occur are those addressed in § 134.19, concerning oral hearings, and in § 134.24, concerning discovery. The following general policies are, therefore, stated for the purpose of providing guidance to the judges and all parties, but this guidance retains a measure of flexibility due to the differences in types of cases and the circumstances attending each case.

(g) It is emphasized that the standard stated in § 134.19(b) shall be applicable in all decisions respecting the grant of an oral hearing, irrespective of the type of case. No oral hearing shall be granted unless there is genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. Section 134.19 authorizes the presiding judge to determine whether or not an oral hearing is appropriate in the circumstances of each case. This is a determination that, appropriately, is reserved to the judge to assure fairness and reasonable opportunity to be heard.

(1) In APA proceedings, the requirement of an opportunity for an oral hearing on the record raises a presumption in favor of an oral hearing, where requested, although resolution of APA cases on the basis of a written record is encouraged, where appropriate.

(2) In non-APA external cases involving sanctions imposed or proposed by the Agency, the judge shall have discretion to grant an oral hearing where there is a genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. The presumption is that, while due process considerations may warrant oral hearings in many sanction-type non-APA cases, the fact that Congress has not required such cases to be heard on the record with full APA formality means that the requirements of due process of law may also be met in a decisional process not requiring an oral hearing but preserving the opportunity to be heard through written submissions.

These sanction-type cases involving external parties, which are not required by law to be heard on the record and to conform to APA requirements, are enumerated in paragraphs (a), (g)-(j), and (l) of § 134.3.

(3) In internal Agency cases, enumerated in § 134.3 (e) and (f), it is recognized that, as a matter of law, there is not a right to the same full array of due process elements as may be appropriate in the external cases. Nevertheless, the same standard shall be applied in determining whether an oral hearing is necessary in any individual case. In making this determination, the judge may also assess the importance of the disputed fact of decisional significance in terms of the Agency's proper interest in resolving internal matters in ways consistent with sound budgetary and internal management practices. For example, it is not contemplated that grievances will ordinarily require oral hearings.

(h) Section 134.24 provides for discovery procedures to be available, in the judge's discretion and upon motion, including requests for admissions, interrogatories, depositions, and requests for production of documents. This section contemplates that, in the more formal proceedings, the individual circumstances of any case may warrant discovery. However, consistent with the three basic classes of cases recognized above (APA, non-APA external cases, and internal Agency cases), it is also contemplated that formal discovery will be granted sparingly in internal Agency cases.

(1) In internal Agency cases, the practice of holding pre-hearing conferences for purposes of identifying the issues and providing appropriate information to all parties, through exchange of documents or otherwise, shall be favored by the judge irrespective of whether an oral hearing is granted. It should be noted that under § 134.27 the judge has available effective measures for directing or ordering the parties to cooperate in a timely and efficient process of defining and resolving the issues.

(2) In the external cases, discovery beyond that which may result from pre-hearing conferences is more likely to be appropriate in some cases. This, again, is a matter that must remain within the discretion of the judge. The judge shall be guided by consideration of the extent and formality of the due process required by the circumstances of the case. In neither the APA nor non-APA external cases will discovery be a matter of right. It may be granted regarding any matter not privileged that

is relevant to the subject matter of the proceeding. In the non-APA external cases, Agency policy more strongly favors the use of pre-hearing conferences and orders to achieve the basic purposes of discovery, but this policy also preserves the discretion of the judge to grant discovery where it is appropriate.

§ 134.2 Definitions and miscellaneous rules.

(a) *Definitions.* As used in this part:

(1) "Act" means the Small Business Act, as amended, 15 U.S.C. 631 *et seq.*

(2) "Address" means the record address of a party, including the street location (in addition to a postal box number, where used), and postal zip code and the telephone number.

(3) "Administrator" means the Administrator of the Agency.

(4) "Agency" means the United States Small Business Administration.

(5) "Day" means a calendar day, unless otherwise indicated.

(6) "Determination" means only those appealable written Agency actions that are subject to the jurisdiction of the Office of Hearings and Appeals as enumerated in § 134.3 of this part.

(7) "Judge" means an Administrative Law Judge or an Administrative Judge of the Office of Hearings and Appeals appointed by the Administrator, or a delegatee, to serve the Agency in that capacity.

(8) "Hearing" means the presentation of evidence, whether oral or written, for the record.

(9) "Office" means the Office of Hearings and Appeals of the Small Business Administration.

(10) "Party" means the petitioner, grievant, complainant, respondent, intervenor, or Agency (when appropriate).

(11) "Petition," as used in § 134.11 of this part, includes an appeal from any written Agency determination (other than a size determination or product or service classification), a grievance, a complaint, or a request for initiation of a proceeding authorized in this chapter. Appeals from size determinations and product or service classifications are governed by Part 121 of this chapter.

(12) "Petitioner" means the Agency or any person or legal entity entitled to initiate a proceeding under the statutes and regulations administered by the Agency.

(13) "Pleadings" includes all written submissions (other than documentary or testimonial evidence) that are intended to be included in, and considered a part of, the record in any proceeding conducted pursuant to this part.

(14) "Respondent" means the Agency or any person or legal entity against whom a proceeding has been instituted pursuant to this part.

(15) "Agency reviewing official," as used in §§ 134.32(b) and 134.34, concerning initial decisions, means: The Administrator, in those proceedings specified in § 134.32(b) (1), (3) and (8); the Associate Administrator for Minority Small Business and Capital Ownership Development, in those proceedings specified in § 134.32(b)(2); and the Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office, in those proceedings specified in § 134.32(b)(4), (5), (6), (7) and (9).

(16) "SBIA" means the Small Business Investment Act of 1958, 15 U.S.C. 661 *et seq.*

(17) "SOP" means Standard Operating Procedure.

(b) *Miscellaneous Rules.* As used in this part:

(1) Singular nouns, pronouns, and verbs shall be read to include the plural, as appropriate.

(2) In computing the time set forth for the filing of pleadings or for compliance with orders issued pursuant to this part, the day from which the time is computed is not counted. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or a Federal holiday, in which event the next business day following the Saturday, Sunday, or Federal holiday is counted.

§ 134.3 Jurisdiction and function.

The Office will conduct the following proceedings in accordance with the Act, the SBIA, other relevant statutes, the rules set forth in this part and other applicable regulations:

(a) Contractor debarment and suspension proceedings, pursuant to Office of Federal Procurement Policy Letter No. 82-1 and § 125.11 of this chapter;

(b) Proceedings relative to revocation or suspension of Small Business Investment Company licenses; cease and desist orders; and removal or suspension of directors and officers of licensees of Small Business Investment Companies, pursuant to the SBIA and Part 107 of this chapter;

(c) Proceedings to terminate participants from the Act's Section 8(a) Minority Small Business and Capital Ownership Development Assistance Program, pursuant to 15 U.S.C. 637(a), and Part 124 of this chapter;

(d) Proceedings relative to violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*, and Parts 112 or 113 of this chapter and violations of the Equal Credit Opportunity Act of

1974, 15 U.S.C. 1601 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title VIII of the Civil Rights Act of 1968; Title IX of the Education Amendment of 1972, as amended, 20 U.S.C. 1681 *et seq.*; and section 4(b) of the Act, 15 U.S.C. 633(b), pursuant to Part 113 of this chapter, alleged by a person who claims to have been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any financial assistance activities of the Agency;

(e) Proceedings relative to employee formal stage grievances, pursuant to Agency SOP 37-71;

(f) Arbitrations arising under any pertinent labor agreement where all parties agree that the matter should be heard by the Office;

(g) Proceedings relative to the privilege of any applicant or agent to appear before the Agency, pursuant to 15 U.S.C. 634 and 642 *et seq.* and Part 103 of this chapter;

(h) Proceedings relative to the eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in Agency loan programs, once they have begun to do so, pursuant to 15 U.S.C. 634 (b)(6) *et seq.* and Parts 120 and 122 of this chapter;

(i) Proceedings relative to the termination of surety bond program participants, pursuant to 15 U.S.C. 694(a) *et seq.* and Part 115 of this chapter;

(j) Proceedings relative to the rights, privileges or obligations of development companies, pursuant to sections 501, 502, and 503 of the SBIA, 15 U.S.C. 687 *et seq.* and Part 108 of this chapter;

(k) Proceedings to determine allowance of costs and fees, pursuant to the Equal Access to Justice Act, 5 U.S.C. 504 and Part 132 of this chapter;

(l) Proceedings relative to debarment from appearance before the Agency because of post-employment restrictions, pursuant to 18 U.S.C. 207(a) *et seq.* and Part 105 of this chapter;

(m) Proceedings relative to the collection of debts owed to the Agency and to the United States, pursuant to the Debt Collection Act of 1982 and Part 140 of this chapter.

(n) Such other hearing, determination or appeal proceedings, other than those regarding size determinations or product or service classifications, as may be referred to the Office by appropriate authority.

§ 134.4 Waiver and interpretation of rules.

(a) *Waiver.* In the exercise of discretion and for good cause shown, the judge may, after notice to all parties, waive any time limit set forth in this

part, other than those time limits in § 134.11(a) of this part for filing petitions, unless such time is limited by statute.

(b) *Interpretation.* The rules set forth in this part shall be liberally construed to carry out the purposes of the Act, the SBIA, and rules administered by the Agency, and to secure just and prompt determinations in all proceedings.

Subpart B—Rules of Practice

§ 134.10 Applicability.

The rules set forth in this subpart shall apply to proceedings regarding those matters specified in § 134.3 of this part.

§ 134.11 Commencement proceedings.

(a) *By Petition.* A proceeding may be commenced by a party other than the Agency by serving and filing a petition in accordance with §§ 134.14 and 134.15 of this part.

(1) The petition shall be in writing, shall be affirmed in accordance with § 134.15, and shall contain the following:

(i) The legal authority and jurisdiction for the proceeding;

(ii) A clear and concise statement setting forth the factual basis for the commencement of the proceeding;

(iii) A statement of the relief requested; and

(iv) The signature of the petitioner or authorized representative and his or her address.

(2) Except as provided in paragraphs (a)(3), (4), (5), and (6) of this section, a petition shall be served and filed no later than 30 days after the date of issuance of the written Agency action to which it applies.

(3) In the case of complaints alleging discrimination pursuant to §§ 108.502-1(k) and 122.2(d)(3) of this chapter, a petition shall be filed no later than 90 days after the alleged discrimination occurs.

(4) In the case of applications for an award of fees pursuant to Part 132 of this chapter, a petition shall be filed no later than 30 days after the decision to which it applies becomes final in accordance with § 134.32 of this part.

(5) Except in those cases where such time limit is waived by the judge for good cause shown, a formal employee grievance petition shall be filed no later than 20 days after issuance of the deciding official's decision to which it applies or after expiration of the time limit set forth in Agency SOP 37-71 for issuing such decision, whichever is earlier.

(6) In the case of debt collection proceedings pursuant to Part 140 of this

chapter, a petition shall be filed no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset.

(b) *By Order to Show Cause.* The Agency will commence a proceeding by issuing to the respondent an appropriate written order to show cause or notice containing the information set forth in paragraph (a)(1) of this section.

(c) *Motion for More Definite Statement.* Where a reasonable showing is made by a respondent that he or she cannot frame a responsive answer based on the allegations contained in the petition, order to show cause or notice, the respondent may move for a more definite statement of the allegations before filing an answer. Such motion shall be filed no later than 15 days after the service of the petition, order to show cause or notice and shall identify the defects complained of and the details desired. The filing of such motion shall stay the time for filing an answer set forth in § 134.12 of this part.

§ 134.12 Answer.

(a) *Time for filing.* The answer to a petition, order to show cause or notice shall be served and filed in accordance with §§ 134.14 and 134.15 of this part, no later than 30 days after the service of such petition, order to show cause or notice or an amendment thereto made in response to a motion for more definite statement pursuant to § 134.11(c) of this part or an amendment made pursuant to § 134.13.

(b) *Contents.* The answer to a petition, order to show cause or notice shall contain the following:

(1) A specific admission or denial of each factual allegation contained in the petition, order to show cause or notice or a statement that the respondent denies knowledge or information sufficient to determine the truth of the allegation, which will then be deemed denied;

(2) A concise statement of the facts supporting any affirmative defenses raised; and

(3) The signature of the respondent or authorized representative and his or her address.

(c) *Failure to Deny.* Allegations in the petition, order to show cause or notice not answered in accordance with paragraph (b)(1) of this section shall be deemed to be admitted.

(d) *Admission of Allegations.* An answer that admits all factual allegations shall constitute a waiver of the right to present evidence or witnesses pursuant to § 134.28(c) of this chapter but the right to further participation in the proceeding shall

continue and questions of law and Agency precedent may be addressed.

(e) *Default.* Failure of the respondent to file an answer within the time set forth in paragraph (a) of this section shall constitute a default, and the judge will, without further notice, render an appropriate decision. The respondent shall have no right to participate further in the proceeding.

§ 134.13 Amendments and supplemental pleadings.

(a) *Amendments by Leave.* If a determination of a controversy on the merits will be facilitated thereby, the judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to pleadings, except that an application for amendment of an order to show cause may be allowed only if the amendment is reasonably within the scope of the proceeding initiated by the original order to show cause.

(b) *Conformance to Evidence.* When issues not raised by the pleadings, but reasonably within the scope of the proceeding initiated by the original petition, order to show cause or notice, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments of the pleadings as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(c) *Supplemental Pleadings.* The judge may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events that have taken place since the date of the pleading sought to be supplemented and that are relevant to any of the issues in the proceeding.

§ 134.14 Filing and service of pleadings.

(a) *Filing.* Except as otherwise specifically provided in this part, an original and one copy of all pleadings shall be filed with the Office by mail addressed to: Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416, or by personal delivery to Suite 300, 2100 K Street, NW., Washington, D.C. The date of filing shall be the date the pleading is received by the Office.

(b) *Service.* Except as provided in Agency SOP 37-71 relating to formal employee grievances, each party shall be responsible for service of all its pleadings upon all other parties or their authorized representatives. Service shall be complete upon personal delivery or upon mailing first class postage prepaid,

to the record address, unless otherwise ordered by the judge. All pleadings shall include a signed certificate stating how and when service was made.

(c) *Excision of Confidential Information.* Any information in pleadings that constitutes proprietary or confidential information need not be served upon other parties so long as such deletions are identified and described in copies served upon such other parties. Such excisions may be the subject of a discovery motion pursuant to § 134.24 of this part and may be released under a protective order, where the judge deems appropriate.

(d) *Waiver of Rights to Service.* A party's failure to include a complete address, or to advise the Office of a changed address, shall constitute a waiver of the right to notice and service as provided in this part.

§ 134.15 Form requirements for pleadings.

Except as provided in Agency SOP 37-71, pleadings shall be typewritten on 8½ by 11-inch opaque paper, shall contain a caption that sufficiently identifies the parties, and shall be signed by an authorized person. Petitions, orders to show cause (except those signed by the Administrator), answers, interrogatories, and answers to interrogatories shall also contain a statement by the signatory stating as follows: "I have read this document and, under penalty of law and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I affirm that, to the best of my knowledge, the statements made herein are true and correct, and that this document is not being filed for the purpose of delay or harassment."

§ 134.16 Appearances.

(a) *Qualifications.* Except in arbitrations and in proceedings involving formal employee grievances (which are governed by the provisions of Agency SOP 37-71), parties to a proceeding may be represented only by a member in good standing of the bar of a Federal court or the highest court of any state or territory of the United States, or may represent themselves (appear *pro se*). A member of a partnership may represent the partnership and an authorized officer of a corporation, trust or association may represent the corporation, trust or association.

(b) *Notice of appearance.* An attorney or other representative appearing on behalf of a party shall serve and file a written notice of appearance in accordance with §§ 134.14 and 134.15 of this part.

(c) *Restrictions as to Former Employees.* No former employee of the Agency shall appear as attorney for any party in any proceeding, or represent a party in any capacity, in violation of §§ 105.401, 105.402, 105.405 or 105.406 of this chapter.

(d) *Standards of Conduct.* Attorneys appearing in any proceeding shall conform to the standards of ethical conduct required in the Courts of the United States.

(e) *Withdrawal of Appearance.* An attorney or other representative wishing to withdraw from a proceeding shall serve and file a written motion for withdrawal of appearance in accordance with §§ 134.14 and 134.15 of this part. Except in arbitrations or proceedings involving formal employee grievances, in which a written request for withdrawal by either the grievant or the representative shall be automatically granted, withdrawal of appearance will be allowed by the judge, for good cause shown.

§ 134.17 Intervention.

(a) *Intervention as of Right.* The following rules shall apply to those proceedings in which an oral hearing is conducted pursuant to § 134.19 of this part, provided that the notice or motion is filed prior to the commencement of the oral hearing.

(1) The Agency may intervene, as a matter of right, by serving and filing a notice of intervention in accordance with § 134.21(a) of this part.

(2) Any individual partnership, association, corporation, or other agency shall serve and file a motion to intervene in accordance with § 134.21(a) of this part. The motion shall contain a brief statement of the movant's relationship to an interest in the proceeding. The judge shall grant leave to intervene, to such extent and upon such terms as are appropriate, upon finding that:

(i) There is a statutory right to intervene; or

(ii) The movant has an immediate property, financial, or other justiciable interest; the relief requested in the proceeding will affect such interest; and other means are not available to protect the movant's interest.

(b) *Discretionary intervention.* After commencement of an oral hearing or at any stage of a proceeding for which no oral hearing has been provided, the Agency or any other agency, individual, partnership, association or corporation may seek to intervene by serving and filing a motion in accordance with § 134.21(a) of this part. The motion shall contain a brief statement of the movant's interest in the proceeding. The

judge may grant leave to intervene, to such an extent and upon such terms as appropriate, if:

(1) The movant's interest will not be represented by the existing parties;

(2) The movant's participation may reasonably be expected to assist in the development of a proper record; and

(3) The movant's participation will not broaden the issues, resulting in prejudicial delay of the proceeding.

§ 134.18 Judges.

(a) *Assignment of Judge.* Proceedings subject to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, shall be assigned to the Chief Administrative Law Judge or, by him or her, to another Administrative Law Judge. All other proceedings subject to this Part shall be assigned to an Administrative Judge or to an Administrative Law Judge. The Office will notify all parties of the identity of the judge assigned.

(b) *Duties and Powers of Judges.* The judge will assume jurisdiction upon assignment to a proceeding and shall have the power to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas and protective orders;

(3) Rule upon motions to quash or to modify subpoenas;

(4) Rule upon offers of proof and receive evidence;

(5) Take or cause depositions to be taken and determine their scope;

(6) Hold pre-hearing and other conferences for the settlement, simplification or clarification of the issues, and for other appropriate purposes;

(7) Dispose of procedural requests and motions;

(8) Regulate the course of the proceeding, require an oral hearing or telephone conference, if appropriate, fix the time and place of such oral hearing or conference, and exclude persons from such oral hearing or conference for contumacious conduct;

(9) Call and examine witnesses and introduce documentary or other evidence;

(10) Require the parties to state their respective positions concerning any issue in the proceeding at any time;

(11) Issue decisions and orders; and

(12) Take any other appropriate action authorized by this Part or the Delegations of Authority to the Office.

(c) *Protective orders.* Upon motion by a party, or by any person from whom discovery is sought, for good cause shown, or upon his or her own motion, the judge may issue such orders as justice requires to protect a party or person from harassment, embarrassment, oppression, or undue

burden or expense, or from breach of confidentiality of material or information warranting protection.

(d) *Recusal.* The following rules shall apply regarding recusal of judges in proceedings under this part:

(1) A judge shall recuse himself or herself from a proceeding on his or her own initiative whenever such judge deems himself or herself to be disqualified.

(2) At any time following assignment of the judge and before issuance of the judge's decision under § 134.32 of this part, any party may request the judge to recuse himself or herself on the grounds of personal bias or disqualification, by serving and filing a motion, promptly upon the discovery of the alleged facts, with an affidavit setting forth, in detail, the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the judge, the affidavit is sufficient on its face, the judge shall recuse himself or herself. If the judge does not recuse himself or herself, the judge shall so rule, state the grounds for the ruling, and continue with the proceeding or issue the decision. A denial of a request for recusal may be appealed to the Assistant Administrator or Chief Administrative Law Judge of the Office, but such appeal shall not stay the proceeding.

(e) *Interference.* No officer, employee or agent of the Agency or other person or party shall interfere with a judge's decisional independence. If the judge has a question as to whether there has been a prohibited interference with his or her independence, the matter shall be made part of the record in the proceeding on notice to the parties.

(f) *Substitution of Judge.* In the event of substitution of a new judge for the one originally assigned, any motion predicated upon such substitution shall be made no later than seven days thereafter.

§ 134.19 Oral hearings.

(a) *Request for Oral Hearing.* Any party may request the opportunity for an oral hearing to adduce testimony to support or refute any fact alleged in a pleading. The request for an oral hearing shall be served and filed in accordance with § 134.21(a) no later than 20 days after the service of the answer to such pleading.

(b) *Notice of Oral Hearing.* If a judge grants a request for an oral hearing, or makes his or her own determination that one is necessary, because of a genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses, he or she will so advise the

parties and, with appropriate notice, designate the time and place for such hearing and the issues to be addressed. The judge shall give due regard to the convenience and necessity of the parties or their authorized representatives in designating the time and place of the oral hearing and may conduct such hearing by telephone conference in appropriate circumstances.

(c) *Postponements.* Postponement of an oral hearing will be allowed only upon good cause shown or upon agreement of the parties, concurred in by the judge. Except in unusual circumstances, no motion for a postponement will be considered unless it is served and filed in accordance with § 134.21(a) at least seven days in advance of the date designated for the oral hearing.

(d) *Failure to Appear.* The failure of a party to appear for an oral hearing or to participate in a prearranged telephone conference, unless excused by the judge for good cause shown, before or after the fact, may be deemed to be a waiver by that party of all rights to participate further in the proceeding.

(e) *Public Access to Oral Hearing.* All oral hearings, except those involving employee grievances, shall be public unless, for good cause shown, a closed hearing is ordered by the judge.

(f) *Witnesses.* Subpoenaed witnesses shall be paid the same fees and mileage costs as are paid in the Federal courts. The party who requests the witness's presence shall be responsible for paying such fees. Except in the case of subpoenas issued on behalf of a Federal government entity, one day's fees and mileage costs shall be tendered to the subpoenaed witness at the time of service of the subpoena. Subsequent entitlements shall be payable following the appearance and release of the witness.

(g) *Recording and Transcripts.* Oral hearings will be recorded verbatim. The judge may make a final, initial or recommended decision without having an official transcript of the record, unless a transcript is required pursuant to statute or to rules set forth in this chapter. A transcript or copies of a recording may be obtained by the parties upon request to the recording service. Any fees in connection therewith shall be the responsibility of the parties.

§ 134.20 Prehearing conferences.

(a) *Nature of Prehearing Conference.* The judge, upon motion of any party or upon his or her own motion, may direct all parties or their counsel to confer and consider:

(1) Simplification, clarification, compromise, or settlement of the issues;

(2) Necessity and desirability of amendments to the pleadings;

(3) Stipulations, admissions of fact, and the contents, admissibility, and authenticity of documents;

(4) Where an oral hearing is involved, expedition in the presentation of evidence, including, but not limited to, restriction of the number of witnesses;

(5) A statement of the issues as they then appear;

(6) A proposed plan and schedule of discovery;

(7) Any limitations proposed to be placed on discovery; and

(8) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and furnishing for inspection or copying of non-privileged documents, papers, books, or other physical exhibits, which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of any party to the proceeding.

(b) *Record of Prehearing Conference.* A pre-hearing conference may be conducted by telephone or in person at a time and place convenient to all parties, and, in the discretion of the judge, may be recorded verbatim.

(c) *Order.* After such prehearing conference, the judge will issue an order that recites the actions taken and the agreements made. Such order shall control the subsequent course of the proceeding, unless modified.

§ 134.21 Motions.

(a) *Filing and Service.* Except where the judge permits an oral motion to be made at a conference, or on the record in an oral hearing or telephone conference, all motions shall be written, shall be filed with the Office, and shall be served upon all parties in accordance with §§ 134.14 and 134.15 of this part.

(b) *Contents of Motion.* All motions shall state the particular order, ruling, or action requested and the grounds and authority therefor.

(c) *Answer and Filing of Briefs.* No later than ten days after the service of any motion, or within such time as the judge may direct for good cause shown, the opposing party shall serve and file an answer to the motion, or be deemed to have consented to the relief sought. The moving party shall have no right to reply, except as permitted by the judge. No oral argument will be heard on motions unless the judge directs otherwise. Written briefs may be filed with motions and with answers thereto.

(d) *Disposition of Motion.* All motions shall be ruled upon by the judge

assigned, unless the judge is unavailable. In that event, if circumstances warrant, such motion may be acted upon by the Assistant Administrator or the Chief Administrative Law Judge of the Office, as appropriate.

§ 134.22 Summary decision.

(a) *Motion for Summary Decision.* Any party who believes that there is no genuine issue of material fact of decisional significance, and that he or she is entitled to a decision as a matter of law, may move for a summary decision as to all or any part of the proceeding.

(b) *Contents of Motion.* The motion shall include a statement of the facts as to which the moving party contends there is no genuine issue, shall be supported by the pleadings, and may be accompanied by affidavits and a legal memorandum or brief.

(c) *Answer to Motion.* No later than 20 days after the service of the motion, any other party may serve and file an opposition thereto, and may countermove for summary decision in his or her favor.

(d) *Order.* When a motion for summary decision is granted, the judge will issue an appropriate order as to the issues so determined. If the motion is denied, in whole or in part, the judge will issue an order specifying those facts about which there is no genuine issue and those material facts of decisional significance found to be controverted in good faith. Further proceedings will then be ordered.

§ 134.23 Interlocutory appeals.

(a) *General Rules.* An interlocutory appeal is an appeal of a ruling made by a judge during the course of the proceeding, other than a ruling on a request for recusal or a ruling that is fully dispositive of the proceeding. A motion for leave to take an interlocutory appeal will not be entertained in those proceedings specified in § 134.32(a) (2) and (3) of this part, in which the judge's decision is the final decision of the Agency, or in formal employee grievances. In all other proceedings, an interlocutory appeal shall not be permitted unless, upon motion by a party, or upon the judge's determination, the judge certifies that the question presented is immediately appealable. Interlocutory appeals from a ruling by a judge will be decided by the Agency reviewing official identified in the applicable substantive regulations governing the proceeding.

(b) *Motion for Certification.* A party seeking leave to take an interlocutory

appeal shall file a motion for certification no later than 10 days after issuance of the ruling to which the motion applies. The motion shall include arguments in support of both the certification and the relief requested on the merits.

(c) *Basis for Certification.* The judge will certify a ruling for interlocutory review only if he or she determines that:

(1) The ruling involves an important question of law or policy regarding which there are substantial grounds for a difference of opinion; and

(2) An immediate review will materially expedite completion of the proceeding or denial of review would cause undue hardship to a party or the public.

(d) *Order.* The judge will issue expeditiously an order granting or denying a motion for certification and, if certification is granted, will refer the record to the Agency reviewing official. If certification is denied, the issue may be raised in any appeal of the judge's decision on the merits.

(e) *Stay of Proceeding.* A stay of the proceeding, while an interlocutory appeal is pending, shall be at the discretion of the judge.

§ 134.24 Discovery.

In the judge's discretion, and upon motion, a party may obtain discovery in the form of requests for admissions, interrogatories, depositions, or requests for production of documents, regarding any matter, not privileged, that is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought will be inadmissible, if it appears reasonably calculated to lead to the discovery of admissible evidence. The judge will ordinarily limit the length of time allowed for discovery consistent with the exigencies of the proceeding.

§ 134.25 Subpoenas.

(a) *Scope.* A request for the issuance of a subpoena requiring a witness to appear and testify at a specific place and time or production of documents shall be made to the judge, except that subpoenas shall not be authorized for any proceeding relative to internal Agency determinations, e.g. formal employee grievances and arbitrations.

(b) *Requests.* Requests for subpoenas may be made on the record at the oral hearing or *ex parte* by written application, in triplicate. All requests shall clearly identify the person subpoenaed and shall be supported by a showing of the relevance, scope and materiality of the evidence sought. Requests for a subpoena *duces tecum* shall specify with particularity the

books, papers, and documents desired and the facts expected to be provided thereby, and shall be affirmed in accordance with § 134.15 of this part.

(c) *Service.* The following rules shall apply to service of subpoenas:

(1) Service of a subpoena shall be made by any person who is over 18 years of age, or by certified mail, return receipt requested.

(2) Service of a subpoena by a person other than a United States Marshal or Deputy shall be attested by the person making such service. The attesting affidavit shall state the date, time, and method of service.

(3) In the case of service by certified mail, a copy of the document shall be addressed to the person or business entity to be served, at its residence, principal office or place of business. The return receipt shall be proof of service of the document.

(d) *Motion to Quash.* Motions to limit or quash a subpoena shall be served and filed no later than 10 days after receipt of service of the subpoena or by the return date specified. Any response to such motion shall be served and filed within seven days after the service of the motion, unless a shorter time is specified by the judge to meet the exigencies of a particular case. Oral argument on the motion may be heard at the judge's discretion.

§ 134.26 Motions to compel.

Subject to the limitations of § 134.25(a) of this part, and upon reasonable notice to all other parties and persons affected thereby, a party may make a motion for an order compelling discovery or for the production of witnesses or documents. The judge may deny the motion or compel discovery or production and may also issue a protective order, upon the request of the party or person from whom discovery or production is sought or upon his or her own motion.

§ 134.27 Sanctions.

If any party fails to comply with a written or oral order of the judge, the judge may impose appropriate sanctions including, but not limited to:

(a) Drawing an inference in favor of a party regarding the information sought;

(b) Prohibiting the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

(c) Permitting the requesting party to introduce secondary evidence concerning the information sought;

(d) Striking any part of the pleadings of the party failing to comply with such request; or

(e) Taking such other appropriate action as is deemed necessary to serve the ends of justice.

§ 134.28 Evidence.

(a) *Applicability of the Federal Rules of Evidence.* Unless otherwise provided by statute or this part, the Federal Rules of Evidence may be used as a general guide in all proceedings subject to this part.

(b) *Admissibility.* All material, relevant, and otherwise reliable information is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or if it is needlessly cumulative. Introduction of hearsay evidence will be permitted when it is deemed reliable, probative, material and relevant. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) *Parties' Rights to Present Evidence or Witnesses.* The parties shall have the following rights regarding the presentation of evidence and witnesses:

(1) When an oral hearing or a telephone conference has been provided, a party shall be entitled to present his or her case or defense by oral, documentary and physical evidence, by depositions, and by duly authenticated copies of records and documents, to submit rebuttal evidence, and to conduct reasonable cross-examination.

(2) When no oral hearing or telephone conference has been provided, a party shall be entitled to present his or her case or defense by documentary and physical evidence, by depositions, and by duly authenticated copies of records and documents.

(d) *Objections.* Motions objecting to the admission of evidence, or to the conduct of the proceeding, may be made orally on the record where an oral hearing or telephone conference has been provided, or shall be served and filed in accordance with § 134.21(a) of this part, and shall include a short statement of the grounds therefor. Argument thereon, or briefs or legal memoranda, if requested by the judge, shall be included in the record. Rulings on objections will be made at the time of the objection or prior to the receipt of further evidence, unless the judge orders otherwise, and will be a part of the record. No objections shall be deemed waived by further participation in the proceeding and an automatic exception shall be deemed applicable to every adverse ruling.

(e) *Stipulations.* The parties may, in writing, or orally on the record where an oral hearing or telephone conference has

been provided, agree upon any facts or procedures relevant to the proceeding. Such stipulations shall be binding on the parties.

(f) *Exhibits.* All exhibits offered into evidence shall be numbered and marked so as to identify the party offering the exhibit and shall be filed with the judge in accordance with a pre-trial order or, if there is no pre-trial order, no later than seven days prior to the oral hearing or telephone conference. Copies of all such exhibits shall be served simultaneously upon the opposing party in the proceeding. Admission of exhibits not so served shall be within the judge's discretion. Any information that constitutes proprietary or confidential information may be made the subject of a motion for a protective order.

(g) *Offer of proof.* Whenever evidence is excluded by the judge, the offering party may make an offer of proof of what the party expects to establish with respect thereto. In the case of an oral hearing or telephone conference, if the offer of proof consists of an oral statement, it shall be included in the record. If the offer of proof consists of an exhibit or other documentary evidence, it shall be marked for identification and retained in the record so as to be available for consideration by any reviewing authority.

§ 134.29 Record.

(a) *Docket File.* Upon commencement of a proceeding, the matter will be assigned a docket number. The docket file will consist of the petition, order to show cause or notice, all other pleadings, motions, judge's orders and decisions, evidence admitted into evidence during the proceeding, and any oral hearing or telephone conference record. Public access to such file shall be permitted as follows:

(1) Except as provided in paragraph (a)(2) of this section, the docket file will be available for public inspection at the Office during normal business hours, and copies of such material may be obtained upon payment of the applicable charges;

(2) The following information in the docket file shall not be subject to public inspection or copying:

(i) Information subject to a protective order issued pursuant to § 134.18(c) of this part;

(ii) Any proprietary or confidential information the withholding of which is provided pursuant to § 134.14(c) of this part or which is identified and contained in the Agency case file compiled prior to commencement of the proceeding; and

(iii) Any other information to which public access is prohibited by law or regulation.

(b) *Basis for Decision.* The documents included in the docket file pursuant to paragraph (a) of this section shall constitute the exclusive record for decision. Where the decision is based on official notice of a material fact not appearing in the record, any party will, on written request filed no later than seven days following issuance of the decision, be afforded an opportunity to show the contrary.

(c) *Closing of Record.* The record of the proceeding shall be closed in accordance with the following procedures:

(1) When an oral hearing or telephone conference has been provided, the record will be closed at the conclusion of such hearing, unless the judge directs otherwise. After the record has been closed, no additional evidence or argument will be accepted, except upon the grant of a motion to reopen the record under § 134.33 of this part. If a transcript of the hearing is made, corrections may be permitted upon motion made no later than ten days after receipt of the transcript, and corrections will be permitted by the judge only if errors of substance are involved. The judge may, on his or her own motion and on notice to the parties, make such corrections as are deemed necessary. The judge shall make a part of the record any approved corrections to the transcript and any motions and rulings made after the closing of the record.

(2) When no oral hearing has been provided, the record will be closed on the date set by the judge as the final date for the receipt of submissions from the parties. After the record has been closed, no additional documents will be accepted except upon grant of a motion to reopen the record under § 134.33 of this part. The judge shall make a part of the record any motions and rulings made after the closing of the record.

(d) *Certification of Record.* Upon the closing of the record, the judge shall certify and file with the Office a true and correct copy of the entire record consisting of the recording or transcript of testimony, if any, and all exhibits, pleadings, orders, papers, and requests filed in the proceeding.

§ 134.30 Proposed findings, conclusions, and order.

(a) *Request to File.* Upon request, in those proceedings where such filing is not a matter of right, the judge may allow the parties to file proposed findings of fact and conclusions of law and a proposed order accompanied by a supporting brief.

(b) *Required by Judge.* In any proceeding, the judge may, in his or her

discretion, direct the parties to file proposed findings of fact and conclusions of law and a proposed order accompanied by a supporting brief. In the event of non-compliance with such direction, the defaulting party may be deemed to have waived his or her right to object to the findings and conclusions of the judge.

§ 134.31 Contents of decisions

(a) *Contents.* The decision of the judge will be based upon the whole record, will be predicated upon a preponderance of the evidence, and will include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact and law of decisional significance.

(b) *Service of Decisions and Orders.* A copy of each written decision and order issued by the judge shall be served by the Office on each party to the proceeding.

§ 134.32 Finality of decisions.

(a) *Final decisions.* A decision by the judge shall be the final decision, upon issuance, in the following proceedings:

(1) Proceedings relative to formal employee grievances, pursuant to Agency SOP 37-71, which shall be final 15 days after issuance, provided that the deciding official designated in such SOP has not petitioned the Deputy Administrator (or the Inspector General, in the case of OIG grievances) for review, upon concurrence of the General Counsel (or the Counsel to the Inspector General in the case of OIG grievances), within such 15 day period, based on an allegation that the decision issued by the judge is contrary to law, regulation or Agency policy or is impracticable to implement, in which case the final decision shall be rendered by the Deputy Administrator (or Inspector General, as appropriate);

(2) Arbitrations arising under any pertinent labor agreement;

(3) Proceedings relative to the collection of debts owed to the Agency and to the United States, pursuant to the Debt Collection Act of 1982 and Part 140 of this chapter.

(b) *Initial Decisions.* Except as otherwise provided by statute, unless a petition for review has been filed pursuant to § 134.34(a) of this part or the Agency reviewing official has ordered review pursuant to § 134.34(b), an initial decision of the judge shall be deemed adopted by the reviewing official and shall be the final decision of the Agency 30 days after issuance, in the following proceedings:

(1) Proceedings relative to revocation or suspension of Small Business

Investment Company licenses; cease and desist orders; and removal or suspension of directors and officers of licensees of Small Business Investment Companies, pursuant to the SBIA and part 107 of this chapter;

(2) Proceedings to terminate participants in the Act's Section 8(a) Minority Small Business and Capital Ownership Development Assistance Program, pursuant to 15 U.S.C. 637(a) and part 124 of this chapter;

(3) Proceedings relative to violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*, and Parts 112 or 113 of this chapter, and violations of the Equal Credit Opportunity Act of 1974, 15 U.S.C. 1601 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title VIII of the Civil Rights Act of 1968; Title IX of the Education Amendment of 1972, as amended, 20 U.S.C. 1681 *et seq.*; and section 4(b) of the Act, 15 U.S.C. 633(b), pursuant to Part 113 of this chapter, alleged by a person who claims to have been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any financial assistance activities of the Agency;

(4) Proceedings relative to the privilege of any applicant or agent to appear before the Agency, pursuant to 15 U.S.C. 634 and 642 *et seq.*, and Part 103 of this chapter;

(5) Proceedings relative to the eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in Agency loan programs, pursuant to 15 U.S.C. 634(b)(6) *et seq.*, and Parts 120 and 122 of this chapter;

(6) Proceedings relative to the termination of surety bond program participants, pursuant to 15 U.S.C. 694(a) *et seq.*, and Part 115 of this chapter;

(7) Proceedings relative to the rights, privileges or obligations of development companies, pursuant to sections 501, 502, and 503 of the SBIA, 15 U.S.C. 687 *et seq.*, and Part 108 of this chapter;

(8) Proceedings to determine allowance of costs and fees, pursuant to the Equal Access to Justice Act, 5 U.S.C. 504 and Part 132 of this chapter; and

(9) Proceedings relative to debarment from appearance before the Agency because of post-employment restrictions, pursuant to 18 U.S.C. 207(a) *et seq.*, and Part 105 of this chapter.

(c) *Recommended Decisions.* A recommended decision will be issued by the judge in contractor debarment and suspension proceedings, pursuant to Office of Federal Procurement Policy Letter 82-1 and § 125.11 of this chapter. A final decision by the Agency

reviewing official shall be issued and become final in accordance with § 134.35 of this part.

§ 134.33 Requests to reopen record.

(a) *Clerical Errors.* Clerical errors resulting from oversight or omission may be corrected by the judge at any time after the record has been closed, on his or her own initiative after notice to all parties or on motion of any party.

(b) *New Evidence.* If new and material evidence of decisional significance becomes available, which was not available to the moving party before issuance of the decision by the judge, despite due diligence, such party may move to reopen the record within 30 days of issuance of the decision. Such motion shall be directed to the judge by whom the proceeding was conducted.

§ 134.34 Petition for review of initial decision.

(a) *By Petition.* Any party may serve and file a petition for review with the Agency reviewing official identified in the applicable substantive regulations governing the proceeding, within 30 days of issuance of the initial decision. A petition for review shall set forth exceptions to the initial decision, supported by specific references to relevant law, regulations, Agency policy, and the record, and may be supported by a brief.

(b) *By Order.* The Agency reviewing official may issue an order on his or her own motion, within 30 days of issuance of the initial decision, directing that the case be placed on the docket for review and shall serve a copy of such order on all parties to the proceeding.

(c) *Answer.* Within ten days after the filing of the petition or order for review, any party may file an answer.

(d) *Grounds for Review.* The Agency reviewing official may grant a petition for review when it is established that:

- (1) The decision of the judge is based on an erroneous finding of fact or an erroneous interpretation or application of law, regulation or Agency policy; and
- (2) Review is necessary and appropriate to ensure a just and proper disposition of the proceeding and to protect the interests of the parties.

(e) *Order and Effective Date.* After consideration of the record, the Agency reviewing official may:

- (1) Affirm, reverse, or modify the initial decision, which action by the reviewing official shall be the final decision of the Agency, upon issuance;
- (2) Remand the initial decision to the judge, with directions, for appropriate further proceedings; or
- (3) Deny a petition for review

summarily, in which case the decision of the judge shall forthwith become adopted by the reviewing official and shall become the final decision of the Agency.

§ 134.35 Recommended decision.

(a) *Exceptions.* Any party may serve and file exceptions to the recommended decision with the Agency reviewing official identified in the applicable substantive regulations governing the proceeding, within 30 days of the issuance of the recommended decision.

(b) *Contents.* Such exceptions shall be supported by specific references to relevant law, regulations, Agency policy, and the record, and may be supported by a brief.

(c) *Answers.* Within ten days after filing of the exceptions, any party may file an answer.

(d) *Order and Effective Date.* After consideration of the record, the Agency reviewing official may:

(1) Adopt, reject, or modify the recommended decision, which action by the reviewing official shall be the final decision of the Agency, upon issuance; or

(2) Remand the recommended decision to the judge, with directions, for appropriate further proceedings.

§ 134.36 Termination of jurisdiction.

The jurisdiction of the judge shall terminate upon issuance of the final, initial, or recommended decision, except as provided in § 134.33 of this part or unless the case is remanded for appropriate further proceedings.

§ 134.37 Settlements.

(a) *Contents of Settlement Agreement.* At any time after the commencement of the proceeding, the parties may submit to the judge a settlement agreement that includes:

- (1) The basis for the agreement;
- (2) A statement of jurisdiction;
- (3) A provision that the settlement order will have the same force and effect as a decision issued in accordance with this part, except that it shall be final and may not be altered, modified, or set aside;

(4) A waiver of further Agency proceedings and the right to seek judicial review or otherwise challenge the validity of the order;

(5) A statement that the allegations in the petition, order to show cause or notice commencing the proceedings are fully resolved by the agreement and order;

(6) Signatures of the parties to the agreement; and

(7) A proposed order.

(b) *Action on Settlement Agreement.*

After considering the agreement and proposed order, the judge will, within 30 days:

(1) Approve the settlement agreement and issue an order incorporating such agreement by reference; or

(2) Reject the settlement agreement and issue an order notifying the parties of the resumption of the proceeding.

(c) *Continuance Pending Settlement.*

Any party may move to recess the proceeding for a reasonable time to permit negotiation of a settlement. The allowance of such continuance, and the duration thereof, is in the discretion of the judge. On or before the expiration of the time allowed for negotiations, the parties shall:

(1) Submit the proposed settlement agreement to the judge for consideration; or

(2) Inform the judge that an agreement cannot be reached so that the proceeding can be resumed.

(d) *Admissibility.* A rejected settlement agreement and all negotiations relative thereto shall not be admissible in evidence.

§ 134.38 Ex Parte communications.

Except to the extent required for the disposition of *ex parte* matters as authorized by law or this chapter, no person, party or employee of the Agency who performs any investigative or prosecutorial function in connection with a proceeding under this part shall consult or communicate with a judge concerning any fact or question of law or Agency precedent at issue in such proceeding, except on notice and opportunity for all parties to participate. In the event that such an unauthorized consultation or communication is initiated, the judge shall disclose that occurrence on the record with notice to the parties, either by filing therein a memorandum or by making a statement, if the transaction was oral, or by filing any writing delivered to him or her. When such a prohibited communication has been initiated by a party, the judge may give appropriate consideration to the imposition of such sanctions or remedial relief as the circumstances warrant.

Dated: August 15, 1984.

James C. Sanders,
Administrator.

[FR Doc. 84-22483 Filed 8-23-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-16]

Alteration of VOR Federal Airway V-18, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment extends VOR Federal Airway V-18 from Millsap, TX, VORTAC (MQP) to Guthrie, TX, VORTAC (GTH), to enhance traffic flows for westbound traffic originating at or overflying the Dallas-Fort Worth terminal area and to improve flight plan handling for aircraft on this route.

DATES: Effective date—0901 G.m.t., October 25, 1984. Comments must be received on or before October 8, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-16, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves extending VOR Federal Airway V-18 from Millsap, TX, to Guthrie, TX, to enhance traffic flows for westbound traffic originating at or overflying the Dallas-Fort Worth terminal area and to improve flight plan handling for aircraft on this route, in conjunction with the implementation of new standard instrument departures from the Dallas-Fort Worth terminal area and, thus, was not preceded by

notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to extend VOR Federal Airway V-18 from the Millsap, TX, VORTAC (MQP) to the Guthrie, TX, VORTAC (GTH) § 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to extend V-18 so the airway will coincide with the new standard instrument departures from the Dallas-Fort Worth terminal area, to be effective October 25, 1984. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V-18 [Amended]

By removing the words "From Millsap, TX, via" and substituting the words "From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap;" (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 17, 1984.

Harold W. Becker,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-22488 Filed 8-23-84; 8:45 am]

BILLING CODE 4510-13-M

14 CFR Part 71

[Airspace Docket No. 84-ASW-26]

Designation of Federal Airways; Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area; Freeport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Freeport, TX. The intended effect of the amendment is to provide additional controlled airspace for helicopters executing a new standard instrument approach procedure (SIAP) to a point in space. This amendment is necessary since there is a new point in space SIAP for helicopters being developed for the Air Logistics landing area.

EFFECTIVE DATE: October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2630.

SUPPLEMENTARY INFORMATION:**History**

On June 28, 1984, a notice of proposed rulemaking was published in the Federal Register (49 FR 26600) stating that the Federal Aviation Administration proposed to alter the Freeport, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections.

Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 G.m.t., October 25, 1984, by adding the following:

Freeport, TX Revised

and within 2.5 miles each side of the Scholes Vortac 233° radial at a point beginning 19.5 miles southwest of the vortac and extending to 26.5 miles southwest.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on August 10, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-22490 Filed 8-23-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE**International Trade Administration**

[Docket No. 40804-4104]

15 CFR Part 399

Decontrol of Certain Flame Retardant Chemicals; Interim Rule and Request for Comments

AGENCY: Office of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule removes national security export controls on certain flame retardant chemicals to specified country groups. These flame retardant chemicals are:

Decabromodiphenyloxide
Tetrabromobisphenol A
Tetrabromophthalic anhydride and its esters

Octabromodiphenyloxide
Hexabromocyclododecane
Ethylenebistetrabromophthalimide

The Office of Export Administration in consultation with Departments of Defense and State, has determined that such controls on these flame retardant chemicals need no longer be maintained, especially in light of wide availability abroad. These chemicals however, will be subject to foreign policy controls to Country Groups S and Z, consistent with the policy of prohibiting exports to such country groups. Therefore, these chemicals, previously controlled under entry 5799D of the Commodity Control List (a listing of items subject to Department of Commerce export controls) are now controlled under entry 6799G.

DATES: Effective date shall be August 24, 1984. Comments must be received by October 23, 1984.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Services Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Betty Ferrell, Exporter Services Division, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation to Comment

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this regulation involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring a notice of proposed rulemaking, an opportunity for public participation and a delay in effective date are inapplicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in developing final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.