

§ 500.708

§ 500.708 Settlement during hearing proceedings.

Any party may, at any time during the hearing, unilaterally submit written offers or proposals for settlement of a proceeding to the Secretary or the Secretary's designee, at the address listed in § 500.707(c). Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a hearing. No settlement offer or proposal, nor any subsequent negotiation or resolution, is admissible as evidence in any hearing before this tribunal.

§ 500.709 Motions.

(a) *Written motions.* Except as otherwise specifically provided herein, an application or request for an order or ruling must be made by written motion, in typed format.

(1) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(2) No oral argument may be held on written motions unless directed by the Administrative Law Judge. Written memoranda, briefs, affidavits, and other relevant material and documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the Administrative Law Judge directs that such motion be made in writing.

(c) *Filing of motions—(1) In general.* Motions by respondents must be filed with the Administrative Law Judge and served upon the Office of the Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, with the envelope prominently marked "Urgent: Annex—Room 3133," unless otherwise directed by the Administrative Law Judge. Motions by the Office of Foreign Assets Control must be filed with the Administrative Law Judge and with each respondent or respondent's counsel. Motions may also be concurrently sent by facsimile transmission, courier, or other expedited means.

(2) *Interlocutory appeals.* Motions related to interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission

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to 202/622-1188, by courier, or by other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, with the envelope prominently marked "Attention: OFAC Interlocutory Appeal." Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

(d) *Responses.* (1) Any party may file a written response to a motion within 20 calendar days of the date of its mailing, by registered or certified mail pursuant to this subpart. If directed by the Administrative Law Judge, the time period in which to respond may be shortened or extended. The Administrative Law Judge may allow each party to file a response before finally ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 calendar days of the date the response was filed and served upon all parties.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

§ 500.710 Discovery.

(a) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third-party confidential and/or commercially sensitive materials, placement of information,

documents and/or materials under seal and/or protective order, and interlocutory appeals to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(b) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees must take place in Washington, DC, at the U.S. Treasury Department or at the location where the Federal employee to be deposed performs his duties, whichever the Federal employee's supervisor or the Office of the Chief Counsel, Foreign Assets Control shall deem appropriate. All depositions of Federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(c) *Interrogatories.* Respondent's interrogatories must be served upon the Office of the Chief Counsel, Foreign Assets Control within 20 calendar days of respondent's written request for a hearing. The Office of Foreign Assets Control's interrogatories must be served within 30 calendar days of the receipt of service of respondent's interrogatories or within 30 calendar days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 calendar days to respond to interrogatories from the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer.

(d) *Scope.* Parties may obtain discovery regarding any matter not privileged which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated

to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(e) *Privileged matter.* Privileged documents are not discoverable. Privileges include, inter alia, the attorney-client privilege, attorney work-product privilege, any government's or government agency's deliberative-process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(f) *Updating discovery.* Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by default, and holding a party in contempt.

(g) *Time limits.* All discovery, including all responses to discovery requests, shall be completed no later than 20 calendar days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (g).

§ 500.711 Summary disposition.

(a) *In general.* The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion