

**§ 134.306**

(2) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(3) A full and specific statement as to why the size determination or SIC code designation is alleged to be in error, together with argument supporting such allegations; and

(4) The name, address, telephone number, and signature of the appellant or its attorney.

(b) *Service of size determination appeals.* The appellant must serve the appeal petition upon each of the following:

(1) The SBA official who issued the size determination;

(2) The contracting officer responsible for the procurement affected by a size determination;

(3) The business concern whose size status is at issue;

(4) All persons who filed protests; and

(5) SBA's Office of Procurement Law.

(c) *Service of SIC appeals.* The appellant must serve the contracting officer who made the SIC code designation.

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate identifying each person or governmental agency which was served with the notice of appeal, and how and when each of those persons or governmental agencies was served.

(e) *Dismissal.* An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.

61 FR 2683, Jan. 29, 1996, as amended at 65 FR 57542, Sept. 25, 2000]

**§ 134.306 Transmission of the case file.**

Upon receipt of an appeal petition pertaining to a size determination, the Area Office which issued the size determination must immediately send to OHA the entire case file relating to that determination. Upon receipt of an appeal petition pertaining to a SIC code designation, the contracting officer who designated the SIC code must immediately send to OHA the solicitation relating to that designation.

**13 CFR Ch. I (1-1-01 Edition)**

**§ 134.307 Service and filing requirements.**

The provisions of §134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

**§ 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.**

(a) Evidence not previously presented to the Area Office which issued the size determination being appealed will not be considered by a Judge unless:

(1) The Judge, on his or her own initiative, orders the submission of such evidence; or

(2) A motion is served and filed establishing good cause for the submission of such evidence.

(b) If the submission of evidence is ordered by a Judge, and the party in possession of that evidence does not submit it, the Judge may draw adverse inferences against that party.

**§ 134.309 Response to an appeal petition.**

(a) *Who may respond.* Any person served with an appeal petition, or any other interested person, may serve and file a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* Unless otherwise specified by the Judge, a respondent must serve and file a response within 10 days after service of the appeal petition upon it.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to §134.305.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

**§ 134.310 Discovery.**

Discovery will not be permitted in appeals from size determinations or SIC code designations.

**§ 134.311 Oral hearings.**

Oral hearings will not be held in appeals from SIC code designations, and