

Small Business Administration

§ 134.403

will be held in appeals from size determinations only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

§ 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of §134.223 (a) and (b) apply.

§ 134.313 Applicability of subpart B provisions.

The following sections from subpart B of this part apply to an appeal under this subpart C: §134.207(a) (pertaining to amendments to pleadings); §134.208 (Representation in cases before OHA); §134.209 (Requirement of signature); §134.210 (Intervention); §134.211 (Motions); §134.214 (Subpoenas); §134.218 (Judges); §134.219 (Sanctions); and §134.220 (Prohibition against *ex parte* communications).

§ 134.314 Standard of review.

The standard of review is whether the size determination or SIC code designation was based on clear error of fact or law.

§ 134.315 The record.

Where relevant, the provisions of §134.225 (a), (b), and (c) apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with §134.306.

§ 134.316 The decision.

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

(b) *Finality.* The decision is the final decision of the SBA and becomes effective upon issuance.

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

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.317 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision.

§ 134.318 Return of the case file.

Upon termination of jurisdiction, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

SOURCE: 63 FR 35766, June 30, 1998, unless otherwise noted.

§ 134.401 Scope of the rules in this subpart D.

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

(a) Denials of 8(a) BD program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to §124.206 of this title;

(b) Early graduation pursuant to §§124.302 and 124.304;

(c) Termination pursuant to §§124.303 and 124.304;

(d) Denials of requests to issue a waiver pursuant to §124.515; and

(e) Suspensions pursuant to §124.305(a).

§ 134.402 Appeal petition.

In addition to the requirements of §134.203, an appeal petition must state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law.

§ 134.403 Service of appeal petition.

(a) Concurrent with its filing with OHA, a concern must also serve SBA's AA/8(a)BD and the appropriate Associate General Counsel in SBA's Office of General Counsel with a copy of the petition, including attachments.

(1) For appeals relating to denials of program admission pursuant to §124.206 of this title, suspensions of program assistance pursuant to §124.305, or denials of requests for waivers pursuant to §124.515, a petitioner must serve the