

§ 134.305

13 CFR Ch. I (1-1-05 Edition)

and served within 15 days after appellant receives the size determination;

(2) If the appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 30 days after appellant receives the size determination;

(3) If the appeal is from a NAICS code designation, then the appeal petition must be filed and served within 10 days after the issuance of the initial solicitation. If the appeal relates to an amendment affecting the NAICS code, then the appeal petition must be filed and served within 10 days after the issuance of the amendment.

(b) An untimely appeal will be dismissed. However, an appeal which is untimely under paragraph (a)(1) of this section, with respect to a pending procurement or sale, may, if timely under paragraph (a)(2) of this section, proceed with respect to future procurements or sales.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47249, July 18, 2002]

§ 134.305 The appeal petition.

(a) *Form.* There is no required format for an appeal petition. However, it must include the following information:

(1) The Area Office which issued the size determination, or the contracting office which designated the NAICS code;

(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 NAICS code designation is alleged to be in error, together with argument supporting such allegations; and

(4) The name, address, telephone number, facsimile 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 NAICS appeals.* The appellant must serve the contracting officer who made the NAICS code designation and SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 3rd Street, SW., Washington, DC 20416.

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(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; 67 FR 47250, July 18, 2002; 69 FR 29208, May 21, 2004]

§ 134.306 Transmission of the case file and solicitation.

(a) 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.

(b) Upon receipt of an appeal petition pertaining to a NAICS code designation, or a size determination made in connection with a particular procurement, the procuring agency contracting officer must immediately send to OHA a paper copy of both the original solicitation relating to that procurement and all amendments.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47250, July 18, 2002]

§ 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