

§ 134.103

13 CFR Ch. I (1–1–07 Edition)

section 504 of the Investment Act and part 120, subpart H, of this chapter;

(g) Allowance of fees and expenses under the Equal Access to Justice Act, 5 U.S.C. 504;

(h) Debarment from appearance before the SBA because of post-employment restrictions under 18 U.S.C. 207 and part 105 of this chapter;

(i) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and part 140 of this chapter;

(j) Appeals from the following SBA 8(a) program determinations under the Act and part 124 of this chapter:

(1) Denial of program admission based solely on a negative finding as to social disadvantage, economic disadvantage, ownership or control; program termination; program graduation; or denial of a waiver of the requirement to perform to completion an 8(a) contract; and

(2) Program suspension;

(k) Appeals from size determinations and NAICS code designations under part 121 of this chapter. “Size determinations” include decisions by Government Contracting Area Directors that determine whether two or more concerns are affiliated for purposes of SBA’s financial assistance programs, or other programs for which an appropriate SBA official requested an affiliation determination;

(l) The imposition of civil penalties and assessments against persons who make false claims or statements to SBA under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812 and part 142 of this chapter;

(m) Appeals from the determination of the SBA under part 120 of this chapter to revoke or suspend a microloan intermediary or microloan non-lending technical assistance provider;

(n) Appeals from the following small disadvantaged business (SDB) determinations under part 124 of this chapter:

(1) SBA’s determination that an applicant firm does not qualify for certification, or that a certified SDB no longer qualifies for the program; and

(2) A Private Certifier’s ownership and control determination made on a firm’s application for certification;

(o) The suspension, termination, or non-renewal of cooperative agreements with Women’s Business Centers and Small Business Development Centers under the Act and part 130 of this chapter;

(p) Certain matters involving debarments and suspensions under part 145 of this chapter;

(q) Appeals from the Service-Disabled Veteran-owned SBC Program ownership and control status under part 125 of this chapter;

(r) The decision of the Appropriate Management Official in SBA Employee Dispute Resolution Process cases (Employee Disputes) under Standard Operating Procedure 37 71 02 (available at <http://www.sba.gov/library/soprooom.html>); and

(s) Any other hearing, determination, or appeal proceeding referred to OHA by the Administrator of SBA.

[61 FR 2683, Jan. 29, 1996, as amended at 66 FR 47074, Sept. 11, 2001; 67 FR 47246, July 18, 2002; 69 FR 25271, May 5, 2004; 69 FR 29208, May 21, 2004; 70 FR 17587, Apr. 7, 2005]

§ 134.103 Rules applicable to time periods provided in this part.

(a) The day from which the time period is computed is excluded, but the last business day is counted, excluding Saturday, Sunday, or Federal holiday.

(b) At the Judge’s initiative, or upon the motion of a party showing good cause, the Judge may modify any of the applicable time limits, other than those established by statute and those governing when a case may be commenced.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47246, July 18, 2002]

Subpart B—Rules of Practice for Most Cases

§ 134.201 Scope of the rules in this subpart B.

(a) The rules in this subpart generally apply to all proceedings over which OHA has jurisdiction, except for appeals from size determinations and NAICS code designations. Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act

are set forth, respectively in subpart D of this part and part 142 of this chapter.

(b) In the case of a conflict between a particular rule in this subpart and a rule of procedure pertaining to OHA appearing in another subpart of this part or another part of this chapter, the latter rule shall govern.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998; 67 FR 47246, July 18, 2002]

§ 134.202 Commencement of cases.

(a) A party other than the SBA may commence a case by filing a written petition within the following time periods:

(1) Except as provided by paragraphs (a)(2) through (a)(5) of this section, no later than 45 days from the date of receipt of the SBA action or determination to which the petition relates;

(2) In proceedings for debt collection under part 140 of this chapter: no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset; in accordance with the time frames specified in §140.11 of this chapter with respect to administrative wage garnishment;

(3) In applications for an award of fees pursuant to subpart E of this part, no later than 30 days after the decision to which it applies becomes final;

(4) For 8(a) program suspension proceedings, see §124.305 of this chapter;

(5) For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at www.sba.gov/library/soproom.html.

(b) The SBA may commence a case by issuing to the respondent an appropriate written order to show cause and filing the order to show cause with OHA.

(c) Cases concerning Small Business Investment Company license suspensions and revocations and cease and desist orders must be commenced with an order to show cause containing a statement of the matters of fact and law asserted by the SBA, the legal authority and jurisdiction under which a hearing is to be held, a statement that a hearing will be held, and the time and place for the hearing.

[67 FR 47246, July 18, 2002, as amended at 70 FR 17587, Apr. 7, 2005]

§ 134.203 The petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction;

(2) A copy of the SBA determination being appealed, if applicable, and date received;

(3) A clear and concise statement of the factual basis of the case;

(4) The relief being sought;

(5) The name, address, telephone number, facsimile number, and signature of the petitioner or its attorney;

(6) A certificate of service (see §134.204(d)); and

(7) In a debt collection case, a statement showing when the petitioner received the SBA notice initiating the debt collection proceeding (see §140.3 of this chapter).

(b) A petition also must contain additional information or documents as required by the applicable program regulations in this chapter or by other subparts of this part 134. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at www.sba.gov/library/soproom.html.

(c) A petition which does not contain all of the information required by paragraphs (a) and (b) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

[67 FR 47247, July 18, 2002]

§ 134.204 Filing and service requirements.

(a) *Methods of filing and service.* Pleadings or other submissions must be filed and served by mail, delivery, or facsimile. Mail includes first class (including certified and registered), express, and priority mail. For good cause, the Judge may order that filing or service be effected by one of these methods.

(b) *Filing.* Filing is the receipt of pleadings and other submissions at OHA.

(1) *OHA's address.* OHA accepts filings between the hours of 8:30 a.m. and 5 p.m. eastern time at the following address: Docketing Clerk, Office of Hearings and Appeals, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. OHA's telephone number is (202) 401-8203. The number