

Small Business Administration

§ 134.305

issues the decision after reconsideration. If the Judge remands the case, the Judge may retain jurisdiction at his or her own discretion, and the remand order may include the terms and duration of the remand.

[67 FR 47249, July 18, 2002]

Subpart C—Rules of Practice for Appeals From Size Determinations and NAICS Code Designations

§ 134.301 Scope of the rules in this subpart C.

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

(a) Formal size determinations made by an SBA Government Contracting Area Office, under part 121 of this chapter, or by a Disaster Area Office, in connection with applications for disaster loans; and

(b) NAICS code designations, pursuant to part 121 of this chapter.

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

§ 134.302 Who may appeal.

Appeals from size determinations and NAICS code designations may be filed with OHA by the following, as applicable:

(a) Any person adversely affected by a size determination;

(b) Any person adversely affected by a NAICS code designation. However, with respect to a particular sole source 8(a) contract, only the AA/8(a)BD may appeal a NAICS code designation;

(c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; or

(d) The procuring agency contracting officer responsible for the procurement affected by a size determination.

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

§ 134.303 Advisory opinions.

The Office of Hearings and Appeals does not issue advisory opinions.

[67 FR 47249, July 18, 2002]

§ 134.304 Commencement of appeals from size determinations and NAICS code designations.

(a) Appeals from size determinations and NAICS code designations must be commenced by filing and serving an appeal petition as follows:

(1) If the appeal is from a size determination in a pending procurement or pending Government property sale, then the appeal petition must be filed 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