

§ 134.306

(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]

13 CFR Ch. I (1-1-07 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 filed and served establishing good cause for the submission of such evidence. The offered new evidence must be filed and served with the motion.

(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.

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

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, any intervenor, or any person with a general interest in an issue raised by the appeal may file and serve a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* The Judge will issue a Notice and Order informing the parties of the filing of the appeal petition, establishing the close of record as 15 days after service of the Notice and Order, and informing the parties that OHA must receive any responses to the appeal petition no later than the close of record.

(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.

Small Business Administration

§ 134.401

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

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

§ 134.310 Discovery.

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

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

§ 134.311 Oral hearings.

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

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

§ 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.

Except where inconsistent with this subpart C, the provisions of subpart B of this part apply to appeals from size determinations and NAICS code designations.

[67 FR 47250, July 18, 2002]

§ 134.314 Standard of review and burden of proof.

The standard of review is whether the size determination or NAICS code designation was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence, in both size and NAICS code appeals.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47250, July 18, 2002; 69 FR 29209, May 21, 2004]

§ 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. The Judge will not decide substantive issues raised for the first time on appeal, or which have been abandoned or become moot.

(b) *Finality.* The decision is the final decision of the SBA and becomes effective upon issuance. Where a size appeal is dismissed, the Area Office size determination remains in effect.

(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.

(d) *Reconsideration.* The decision in a NAICS code appeal may not be reconsidered.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47250, July 18, 2002; 69 FR 29209, May 21, 2004]

§ 134.317 Return of the case file.

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

[67 FR 47250, July 18, 2002]

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