

§ 134.401

§ 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. This section does not apply to suspension appeals. For suspensions, see § 124.305 of this chapter.

[63 FR 35766, June 30, 1998, as amended at 67 FR 47250, July 18, 2002]

§ 134.403 Service of appeal petition.

Concurrent with its filing with OHA, the petitioner also must serve separate copies of the petition, including attachments, on two SBA officials.

(a) All 8(a) appeals must be served to: Director, Office of Business Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205-5206, or e-mail at 8aBD2@sba.gov.

(b)(1) Appeals of early graduation or termination also must be served to: Associate General Counsel for Litigation, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205-7415, or e-mail at OLITService@sba.gov.

(2) Appeals of denial of program admission, suspension of program assistance, or denial of a request for waiver also must be served to: Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC

13 CFR Ch. I (1-1-12 Edition)

20416, facsimile (202) 205-6873, or e-mail at OPLService@sba.gov.

[75 FR 47442, Aug. 6, 2010]

§ 134.404 Deadline for filing appeal petition.

An 8(a) appeal petition must be filed within 45 calendar days after receipt of the SBA determination being appealed.

[75 FR 47442, Aug. 6, 2010]

§ 134.405 Jurisdiction.

(a) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed or is not otherwise filed in accordance with the requirements of this subpart or the requirements in subparts A and B of this part; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

(c) Jurisdiction of the Administrative Law Judge in a suspension case is limited to the issue of whether the protection of the Government's interest requires suspension pending resolution of the termination action, unless the Administrative Law Judge has consolidated the suspension appeal with the corresponding termination appeal.

[63 FR 35766, June 30, 1998; 75 FR 47443, Aug. 6, 2010]

§ 134.406 Review of the administrative record.

(a) Any proceeding conducted under § 134.401(a) through (d) shall be decided