

Small Business Administration

§ 134.403

(f) *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; 76 FR 5685, Feb. 2, 2011]

§ 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]

§ 134.318 NAICS appeals.

(a) The regulations at §§ 121.402, 121.1102, and 121.1103 of this chapter also apply to NAICS code appeals.

(b) *Effect of OHA's decision.* If OHA grants the appeal (changes the NAICS code), and the contracting officer receives OHA's decision by the date offers are due, the contracting officer must amend the solicitation to reflect the new NAICS code. If the contracting officer receives OHA's decision after the date offers are due, OHA's decision will not apply to the pending procurement, but will apply to future solicitations for the same supplies or services.

(c) *Summary dismissal.* OHA may summarily dismiss a NAICS appeal either on the Judge's own initiative or on motion by a party. A summary dismissal may be with or without prejudice, and may be issued before the date set for close of record. Grounds for summary dismissal include: premature appeal, withdrawn appeal, settlement, cancellation of the procurement, and contract award.

[75 FR 47442, Aug. 6, 2010]

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

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

[75 FR 47442, Aug. 6, 2010]