

## § 134.1212

(e) *Precedent.* Neither initial nor final decisions rendered by OHA under this subpart are precedential.

(f) *Publication.* Final decisions are normally published without redactions on OHA's website. PPP decisions will likely contain confidential business and financial information and/or personally identifiable information. Therefore, OHA, within its full discretion, may publish final decisions issued under this section with any necessary redactions.

(g) *Appeal to Federal district court.* Final decisions may be appealed to the appropriate Federal district court only.

### § 134.1212 Effects of the decision.

OHA may affirm, reverse, or remand a final SBA loan review decision. If remanded, OHA no longer has jurisdiction over the matter unless a new appeal is filed as a result of a new final SBA loan review decision.

### § 134.1213 Equal Access to Justice Act.

A prevailing appellant is not entitled to recover attorney's fees. Appeals to OHA from final SBA loan review decisions under the PPP are not proceedings that are required to be conducted by an Administrative Law Judge under § 134.603.

### § 134.1214 Confidential information.

If a filing or other submission made pursuant to an appeal in this subpart contains confidential business and financial information; personally identifiable information; source selection sensitive information; income tax returns; documents and information covered under § 120.1060 of this chapter; or any other exempt information, that information is not available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

## Subpart M—Rules of Practice for Appeals of Protest Determinations Regarding the Status of a Concern as a Certified HUBZone Small Business Concern

SOURCE: 88 FR 21089, Apr. 10, 2023, unless otherwise noted.

## 13 CFR Ch. I (1–1–25 Edition)

### § 134.1301 What is the scope of the rules in this subpart?

(a) The rules of practice in this subpart apply to all appeals to OHA from formal protest determinations made by the Director of SBA's Office of HUBZone (D/HUB) in connection with a HUBZone status protest. Appeals under this subpart include any of the grounds for a HUBZone status protest specified in § 126.801 of this chapter, as well as appeals from dismissals of HUBZone status protests by the D/HUB based on a finding that the protest was premature, untimely, nonspecific, not based upon protestable allegations, moot, or not filed by an interested party.

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by subpart C of this part.

### § 134.1302 Who may appeal a HUBZone status protest determination?

Appeals from HUBZone status protest determinations may be filed with OHA by the protested concern, the protester, or the contracting officer responsible for the procurement affected by the protest determination.

### § 134.1303 What time limits apply to filing an appeal from a HUBZone status protest determination?

Appeals from a HUBZone status protest determination must be commenced by filing and serving an appeal petition within ten (10) business days after the appellant receives the HUBZone status protest determination (see § 134.204 for filing and service requirements). OHA shall dismiss any untimely appeal.

### § 134.1304 What are the effects of the filing of an appeal on the procurement at issue?

(a) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(b) If a timely appeal is filed before contract award, the contracting officer

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must withhold award until the appellate decision is rendered, unless the contracting officer has determined that award and performance of the contract is in the best interests of the government.

### § 134.1305 What are the requirements for an appeal petition?

(a) *Format.* An appeal from a HUBZone status protest determination must be in writing. There is no required format for an appeal petition. However, it must include the following information:

- (1) A copy of the protest determination;
- (2) The date the appellant received the protest determination;
- (3) A statement that the petitioner is appealing a HUBZone status protest determination issued by the D/HUB;
- (4) A full and specific statement as to why the HUBZone status protest determination is alleged to be based on a clear error of fact or law, together with argument supporting such allegation;
- (5) The solicitation number, the contract number (if applicable), and the name, address, and telephone number of the contracting officer; and
- (6) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

(b) *Service of appeal.* Concurrent with filing the appeal with OHA ([OHAFilings@sba.gov](mailto:OHAFilings@sba.gov)), the appellant must serve copies of the entire appeal petition upon each of the following:

- (1) The D/HUB at [hzappeals@sba.gov](mailto:hzappeals@sba.gov);
- (2) The contracting officer responsible for the procurement affected by a HUBZone determination;
- (3) The protested concern (the business concern whose HUBZone status is at issue) or the protester; and
- (4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law at [OPLservice@sba.gov](mailto:OPLservice@sba.gov).

(c) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(d) *Dismissal.* An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge on the Judge's own initiative or upon motion of a respondent.

### § 134.1306 What are the 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, unless otherwise indicated in this subpart.

### § 134.1307 What are the requirements for transmitting the protest file?

Upon receipt of an appeal petition, the D/HUB will send to OHA a copy of the protest file relating to that determination. The D/HUB will certify and authenticate that the protest file, to the best of the D/HUB's knowledge, is a true and correct copy of the protest file.

### § 134.1308 What is the standard of review?

The standard of review for an appeal of a HUBZone status protest determination is whether the D/HUB's determination was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.

### § 134.1309 When will a Judge dismiss an appeal?

The presiding Judge must dismiss the appeal if:

- (a) The appeal is untimely filed under § 134.1303;
- (b) The appeal does not, on its face, allege facts that if proven to be true, warrant reversal or modification of the determination; or
- (c) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters; however, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

### § 134.1310 Who can file a response to an appeal petition and when must such a response be filed?

(a) *Who may respond.* Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. The response should present arguments related to the issues presented on appeal.