

### § 134.805

(3) Associate General Counsel for General Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, e-mail: *OGLService@sba.gov*, except that an employee of the Office of Inspector General (OIG) must serve it upon the Counsel to the Inspector General, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, e-mail: *ig.counseldiv@sba.gov*.

(c) The rules governing filing and service are in § 134.204.

(d) *Dismissal*. An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge at his or her own initiative or upon motion of the SBA.

[75 FR 47443, Aug. 6, 2010, as amended at 82 FR 25507, June 2, 2017]

### § 134.805 After the appeal petition is filed.

(a) The AA/OHA will assign a Judge to adjudicate the case. If mediation is requested or offered, the AA/OHA will assign a different person to mediate the case.

(b) OHA will issue and serve upon the Employee and the SBA a notice and order informing the parties that an appeal has been filed, and setting the date for SBA's response and the close of record.

(c) The rules for amendments to pleadings and supplemental pleadings are in § 134.207.

(d) Unless otherwise instructed, OHA will serve all orders and the decision by email upon the Employee, or upon the attorney if represented by an attorney.

[75 FR 47443, Aug. 6, 2010, as amended at 82 FR 25507, June 2, 2017]

### § 134.806 Mediation.

Either the Employee or the SBA may request mediation, or OHA may offer mediation. OHA may designate a Judge or an OHA attorney to serve as a mediator. If the parties reach a settlement through mediation, they may file a joint motion to dismiss the appeal based on that settlement. If the parties do not reach a settlement, the mediation will conclude and the appeal will go to adjudication. An OHA-provided mediator will not be involved in a subsequent adjudication.

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### § 134.807 SBA response.

(a) If the appeal goes to adjudication, SBA will file and serve the SBA's response to the appeal and any documentation, not already filed by the Employee, that SBA wishes OHA to consider.

(b) Unless the Judge orders a different date (either on his or her own initiative or on motion by a party), the SBA must file any response to the appeal petition no later than 15 calendar days from the conclusion of mediation or 15 calendar days from the filing of the appeal petition, whichever is later.

(c) The SBA's response is normally the last submission in an appeal, although the Judge may order or permit additional submissions. If a party wishes to file an additional submission, the party must file and serve a motion (see § 134.211) accompanied by the proposed submission.

[75 FR 47443, Aug. 6, 2010, as amended at 82 FR 25507, June 2, 2017]

### § 134.808 The decision.

(a) The Judge will decide the appeal within 45 calendar days (if practicable) from close of record. The decision will affirm, modify, remand, or reverse the Step One or Step Two decision.

(b) The standard of review and burden of proof will be determined by the specific issue presented.

(c) OHA's decision is an initial decision which becomes the final decision of the SBA 30 calendar days after issuance, unless a party files a request for review pursuant to § 134.809.

(d) OHA's decision is not precedential and it will not be published.

[75 FR 47443, Aug. 6, 2010, as amended at 82 FR 25507, June 2, 2017]

### § 134.809 Review of initial decision.

(a) If the Chief Human Capital Officer, General Counsel for SBA, or Counsel to the Inspector General (IG) believes OHA's decision is contrary to law, rule, regulation, or SBA policy, that official may file a Petition for Review (PFR) of the decision with the Deputy Administrator (or IG for disputes by OIG employees) for a final SBA Decision. Only the Chief Human Capital Officer, General Counsel, or

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## § 134.904

Counsel to the IG may file a PFR of an OHA decision; the Employee may not.

(b) To file a PFR, the official must request a complete copy of the dispute file from the Assistant Administrator for OHA (AA/OHA) within five calendar days of receiving the decision. The AA/OHA will provide a copy of the dispute file to the official, the Employee, and the Employee's representative within five calendar days of the official's request. The official's PFR is due no later than 15 calendar days from the date the official receives the dispute file. The PFR must specify the objections to OHA's decision.

[82 FR 25507, June 2, 2017]

### Subpart I—Rules of Practice for Petitions for Reconsideration of Size Standards

SOURCE: 82 FR 25507, June 2, 2017, unless otherwise noted.

#### § 134.901 Scope of the rules in this subpart.

(a) The rules of practice in this subpart apply to Size Standard Petitions.

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

#### § 134.902 Standing.

(a) A Size Standard Petition may be filed with OHA by any person that is adversely affected by the Administrator's decision to revise, modify, or establish a size standard.

(b) A business entity is not adversely affected unless it conducts business in the industry associated with the size standard that is being challenged and:

(1) The business entity qualified as a small business concern before the size standard was revised or modified; or

(2) The business entity qualifies as a small business under the size standard as revised or modified.

#### § 134.903 Commencement of cases.

(a) A Size Standard Petition must be filed at OHA not later than 30 calendar days after the publication in the FEDERAL REGISTER of the final rule that revises, modifies, or establishes the chal-

lenged size standard. An untimely Size Standard Petition will be dismissed.

(b) A Size Standard Petition filed in response to a notice of proposed rule-making is premature and will be dismissed.

(c) A Size Standard Petition challenging a size standard that has not been revised, modified, or established through publication in the FEDERAL REGISTER will be dismissed.

#### § 134.904 Requirements for the Size Standard Petition.

(a) *Form.* There is no required form for a Size Standard Petition. However, it must include the following information:

(1) A copy of the final rule published in the FEDERAL REGISTER to revise, modify, or establish a size standard, or an electronic link to the final rule;

(2) A full and specific statement as to which size standard(s) in the final rule the Petitioner is challenging and why the process that was used to revise, modify, or establish each challenged size standard is alleged to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, together with argument supporting such allegation;

(3) A copy of any comments the Petitioner submitted in response to the proposed notice of rulemaking that pertained to the size standard(s) in question, or a statement that no such comments were submitted; and

(4) The name, mailing address, telephone number, facsimile number, email address, and signature of the Petitioner or its attorney.

(b) *Multiple size standards.* A Petitioner may challenge multiple size standards that were revised, modified, or established in the same final rule in a single Size Standard Petition, provided that the Petitioner demonstrates standing for each of the challenged size standards.

(c) *Format.* The formatting provisions of § 134.203(d) apply to Size Standard Petitions.

(d) *Service.* In addition to filing the Size Standard Petition at OHA, the Petitioner must serve a copy of the Size Standard Petition upon each of the following: