

Small Business Administration

§ 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:

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(1) SBA's Office of Size Standards, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; facsimile number (202) 205-6390; or *sizestandards@sba.gov*; and

(2) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; facsimile number (202) 205-6873; or *OPLService@sba.gov*.

(e) *Certificate of service.* The Petitioner must attach to the Size Standard Petition a signed certificate of service meeting the requirements of §134.204(d).

§ 134.905 Notice and order.

Upon receipt of a Size Standard Petition, OHA will assign the matter to a Judge in accordance with §134.218. Unless it appears that the Size Standard Petition will be dismissed under §134.910, the presiding Judge will issue a notice and order initiating the publication required by §121.102(f) of this chapter; specifying a date for the Office of Size Standards to transmit to OHA a copy of the administrative record supporting the revision, modification, or establishment of the challenged size standard(s); and establishing a date for the close of record. Typically, the administrative record will be due seven calendar days after issuance of the notice and order, and the record will close 45 calendar days from the date of OHA's receipt of the Size Standard Petition.

§ 134.906 Intervention.

In accordance with §134.210(b), interested persons with a direct stake in the outcome of the case may contact OHA to intervene in the proceeding and obtain a copy of the Size Standard Petition. In the event that the Size Standard Petition contains confidential information and the intervener is not a governmental entity, the Judge may require that the intervener's attorney be admitted to a protective order before obtaining a complete copy of the Size Standard Petition.

§ 134.907 Filing and service.

The provisions of §134.204 apply to the filing and service of all pleadings and other submissions permitted under

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this subpart unless otherwise indicated in this subpart.

§ 134.908 The administrative record.

The Office of Size Standards will transmit to OHA a copy of the documentation and analysis supporting the revision, modification, or establishment of the challenged size standard by the date specified in the notice and order. The Chief, Office of Size Standards, will certify and authenticate that the administrative record, to the best of his or her knowledge, is complete and correct. The Petitioner and any interveners may, upon request, review the administrative record submitted to OHA. The administrative record will include the documentation and analysis supporting the revision, modification, or establishment of the challenged size standard.

§ 134.909 Standard of review.

The standard of review for deciding a Size Standard Petition is whether the process employed by the Administrator to revise, modify, or establish the size standard was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. OHA will not adjudicate arguments that a different size standard should have been selected. The Petitioner bears the burden of proof.

§ 134.910 Dismissal.

The Judge must dismiss the Size Standard Petition if:

(a) The Size Standard Petition does not, on its face, allege specific facts that if proven to be true, warrant remand of the size standard;

(b) The Petitioner is not adversely affected by the final rule revising, modifying, or establishing a size standard;

(c) The Size Standard Petition is untimely or premature pursuant to §134.903 or is not otherwise filed in accordance with the requirements in subparts A and B of this part; or

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