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SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245-AH01

Regulatory Reform Initiative: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: With this deregulatory action, the U.S. Small Business Administration (SBA) is revising regulations regarding rules of procedure governing cases before the Office of Hearings and Appeals (OHA) to remove an unnecessary regulatory provision and to clarify an existing rule of procedure.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Delorice Price Ford, Assistant Administrator, Office of Hearings and Appeals, (202) 401-8200 or delorice.ford@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Part 134, Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

SBA is removing § 134.317 from its regulations because the procedure addressed in this regulation, the return of size appeal case files, is no longer necessary. Case files

are now transmitted electronically to OHA from SBA's Area Offices, which eliminates the need to return paper records by mail. SBA is also revising § 134.714 to clarify that the decision of a Judge regarding a status protest appeal from a Women-Owned Small Business (WOSB) or Economically Disadvantaged Women-Owned Small Business (EDWOSB) is SBA's final agency decision and becomes effective upon issuance. SBA received one comment regarding reducing the amount of words in its regulations, which we have done in this regulation by removing one section of the OHA's regulations. SBA will consider this comment when drafting future OHA rulemakings.

II. Section by Section Analysis

A. § 134.317 Return of the case file.

SBA is removing § 134.317 of its regulations, which currently states that upon issuance of a decision, OHA will return the case file to the transmitting Area Office. When a size appeal is filed, SBA's Area Office will often mail the original paper protest file to OHA for review. Pursuant to § 134.317, OHA will then send the original file back to the Area Office at the conclusion of the appeal process. For several years, however, OHA has transitioned many of its processes to electronic transmission and storage. OHA will now transition this part of the size appeal process to a completely electronic method. Therefore, neither the Area Offices nor OHA will need to mail the paper protest file back and forth. As such, this regulation is no longer necessary.

B. § 134.714 When must the Judge issue his or her decision?

SBA is adding language to § 134.714 of its regulations to clarify that decisions issued by OHA pursuant to WOSB or EDWOSB status protest appeals are considered final agency decisions. Currently, the rule is silent on the issue, which could lead to

confusion since other size and status appeal regulations in part 134 clearly state that the OHA decision is a final agency decision. *See* § 134.316(d) (size appeals), § 134.409(a) (8(a) appeals), and § 134.515(a) (Service-Disabled Veteran-Owned Small Business Concern status protest appeals). SBA does not follow a different process for women-owned businesses. For example, OHA’s WOSB/EDWOSB appeal decisions currently state that the decision is the final agency decision. As such, SBA believes that the proposed revision for § 134.714 will clarify that the Judge’s decision in a WOSB or EDWOSB status protest appeal is the final agency decision and that the decision becomes effective upon issuance.

III. Compliance with Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, et seq.

B. Executive Order 13771

This rule is expected to be an Executive order deregulatory action with an annualized net savings of \$28,733 and a net present value of \$410,478, both in 2016 dollars.

This rule removes § 134.317, Return of the case file, because it is no longer necessary. Case files will now be transmitted electronically to OHA from the Area Office, eliminating the need to return paper records by mail. This rule will eliminate

significant costs related to packing, labeling, and shipping case files from the transmitting Area Office and returning those files by mail. OHA receives and returns approximately 120 case files per fiscal year to the Area Offices, for a total of 240 shipments. Assuming it takes 45 minutes to prepare the shipment, printing, and mailing the files and that a GS-13 analyst performs this work at a wage of \$112,393 plus 30 percent for benefits, or \$146,111 (\$73 hourly), this would save the government \$13,140, annually. The cost of each shipment is approximately \$70, which would save the government an additional \$16,800 for a total savings of \$29,940 per year, in current dollars.

C. Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive order. As such, it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. If not, the RFA permits agencies to certify to that effect. SBA believes that the removal of § 134.317 will only impact itself and that it will save SBA the costs associated with mailing paper files back and forth during the appeal process. SBA therefore certifies that this rule has “no significant impact upon a substantial number of small entities” within the meaning of the RFA.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Equal employment opportunity, Lawyers, Organizations and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 134 as follows:

PART 134 – RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

Subpart L issued under 15 U.S.C. 636(a)(36); Pub. L. 116-136; Pub. L. 116-139; 116-142; 116-147.

§ 134.317 [Removed and reserved]

2. Remove and reserve § 134.317.
3. Amend § 134.714 by adding a sentence to the end of the section to read as follows:

§ 134.714 When must the Judge issue his or her decision?

* * * The Judge's decision is the final agency decision and becomes effective upon issuance.

Jovita Carranza,
Administrator.

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