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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 106, 109, 110, 111, 128, 129, and 144, and 48 CFR Part 2209

Lease Guarantee; Prepayment of Small Business Investment Company and Certified Development Company Debentures; Small Business Investment Company Investigations; Pollution Control; Grants for Small Business Research; Management Assistance; Discounted Prepayment of Disaster Home Loans; and Contractor Qualifications

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. SBA has determined that eight Parts of its regulations should be entirely eliminated as obsolete, unnecessary or duplicative. This rule eliminates those eight Parts. The reasons for eliminating each of these Parts are set forth below in the Supplementary Information of this rule.

DATES: This rule is effective on October 25, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, at (202) 205-6645.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to all federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. SBA has identified eight Parts of its regulations which can be completely eliminated because they are obsolete, unnecessary or duplicative. Those eight Parts are: 13 CFR Part 106, Lease Guarantee; 13 CFR Part 109, Prepayment of Small Business Investment Company and Certified Development Company Debentures; 13 CFR Part 110, Investigations; Small

Business Investment Companies; 13 CFR Part 111, Pollution Control; 13 CFR Part 128, Grants for Small Business Research; 13 CFR Part 129, Management Assistance; 13 CFR Part 144, Discounted Prepayment of Disaster Home Loans; and 48 CFR Part 2209, Contractor Qualifications. Because SBA has determined that each of the Parts to be eliminated by this rule is obsolete, SBA finds that notice of proposed rulemaking and public comment thereon are unnecessary within the meaning of 5 U.S.C. 553(b). As such, this rule is published in final form.

Brief descriptions of each of these eight Parts and the reasons for their elimination are set forth below.

13 CFR Part 106, Lease Guarantee: Part 106 sets forth the Agency's policy and procedures with respect to the Lease Guarantee Program, which is authorized by 15 U.S.C. § 692. The program was designed to assist certain qualified small business concerns to obtain leases of commercial and industrial property by authorizing SBA to guarantee the payment of rentals under such leases. Congress has not appropriated funds for this program since fiscal year 1977, and no application for a guarantee has been accepted since that time. For this reason, SBA believes that the regulations pertaining to the program may be eliminated as unnecessary. Moreover, there are less than a dozen lease guarantees still in effect.

Sections 106.1 through 106.10 relate to the lease guarantee application process prior to the granting of SBA's assistance and, therefore, should be deleted. Although sections 106.11 through 106.18 relate to servicing provisions, SBA notes that to the extent legal enforceability of certain servicing rights and responsibilities may be required, the contractual documents which govern the remaining lease guarantee transactions provide such enforceability. Thus, these sections are unnecessary and may be eliminated.

13 CFR Part 109, Prepayment of Small Business Investment Company and Certified Development Company Debentures: As directed by Congress, SBA promulgated Part 109 to implement legislation allowing certain debentures to be refinanced. The regulation allowed refinancing of older debentures sold to the Federal Financing Bank by Small Business Investment Companies and Certified Development Companies. These older debentures, because they were sold when interest rates were higher, developed large prepayment premiums when interest rates fell. These premiums would be passed along

to small business borrowers who attempted to prepay their loans.

In response to the problem, Congress passed the Small Business Prepayment Penalty Relief Act of 1994, Public Law 103-403, 108 Stat. 4198, found also in 15 USC 697f. This statutory provision allowed a one-time window of opportunity for borrowers affected by the older debenture prepayment premium to request participation in a refinancing program which would eliminate the large premium. SBA gave notice of the opportunity to affected borrowers. Many borrowers took advantage of the opportunity. SBA paid the difference between the new refinanced amount and the debenture premium, from a special \$30 million fund established by Congress for that purpose.

Because the purpose of the Small Business Prepayment Penalty Relief Act of 1994 and Part 109 have been accomplished and the one-time window of opportunity is now closed, SBA believes that Part 109 should be eliminated.

13 CFR Part 110, Investigations; Small Business Investment Companies: This Part concerns the investigation procedures for SBA's Small Business Investment Company (SBIC) program. These regulations were promulgated in 1962, and were authorized by Title VI of the Small Business Investment Act of 1958. The program assists small business concerns by providing venture capital through SBICs. However, the regulations contained in Part 110 have not been utilized by the program for several years. The scope of examinations and investigations has been amended by statute for the SBIC program and through the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix. In part, these regulations are also now redundant because they address the same information contained in Part 134 regarding proceedings before SBA's Office of Hearings and Appeals (OHA), a regulation promulgated long after Part 110. Additionally, Part 101 of these regulations is currently under revision and will cover Inspector General investigations pertaining to agency programs.

13 CFR Part 111, Pollution Control: Part 111 sets forth the Agency's policy and procedures with respect to the Pollution Control Guarantee Program. Under the program, SBA was authorized to guarantee fully (100 percent) the periodic payments due by small businesses in connection with the purchase or lease of pollution control facilities under a "qualified contract." In 1988, funding for the program was

eliminated and financing of pollution control projects was transferred to section 7(a)(12)(B) of the Small Business Act, 15 U.S.C. 636(a)(12)(B), as a guaranteed financing program.

Sections 111.1 through 111.8 relate to the application process and, therefore, should be eliminated. Although sections 111.9 and 111.10 incorporate some servicing priorities, SBA believes that the Agency's interests will be adequately safeguarded by the rights and responsibilities incorporated into the contractual documents which govern each individual transaction. As such, these sections may also be eliminated.

13 CFR Part 128, Grants for Small Business Research: Part 128 was first promulgated in 1959 (24 FR 7063). It describes a program for SBA-awarded grants for studies, research and counseling concerning the managing, financing and operation of small business enterprises, and technical and statistical information necessary thereto. The program is no longer in operation. Thus, the regulations describing and regulating the program may be eliminated as obsolete.

13 CFR Part 129, Management Assistance: Part 129 pertains to the various management assistance programs of the Agency. Subpart A merely describes the SBA's management assistance programs. It is, however, outdated, does not take into account reorganizations that have occurred within the Agency over the last several years, and does not accurately describe the management assistance program as currently being provided by SBA. In addition, this Subpart is descriptive in nature, rather than regulatory, and can be updated and made a part of an informational pamphlet instead of regulatory text.

Subpart B deals with the reimbursement of travel expenses for Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) volunteers. SBA believes that this Subpart can be eliminated as unnecessary. The reference to ACE is obsolete. Years ago, ACE was a separate entity under the SCORE umbrella, and those volunteers that were still employed were referred to as ACE members. ACE no longer exists as a separate entity today. Today, all volunteers, whether retired or still working, are considered to be members of SCORE, and are obliged to comply with all the requirements and by-laws of the SCORE organization. The statutory authority for the reimbursement of travel expenses remains, but the authority has been delegated in a formal memorandum of understanding to the

SCORE organization on behalf of its membership.

Subpart C is currently "(Reserved)" and can be eliminated as obsolete and unnecessary.

Subpart D is an informative description of SBA's Office of International Trade and the export assistance available through the SBA. It imposes no regulatory requirements or restrictions, and can be eliminated as unnecessary. SBA believes that Subpart D's provisions should more appropriately be contained in an informational brochure regarding the Agency's export assistance.

13 CFR Part 144, Discounted Prepayment of Disaster Home Loans: Part 144 covers a one-time program for fiscal year 1987 authorizing SBA to provide a discount for the prepayment of disaster home loans. This entire Part may be deleted as obsolete.

48 CFR Part 2209, Contractor Qualifications: SBA's supplement to the Federal Acquisition Regulation (FAR) is contained in Chapter 22 of Title 48 of the Code of Federal Regulations. The only substantive area of the FAR that SBA has supplemented is that dealing with the policies and procedures governing the debarment and suspension of contractors by SBA. Thus, SBA's entire supplement to the FAR is contained in Subpart 2209.4, Debarment, Suspension, and Eligibility, and corresponds to the general provisions of the FAR on this subject contained in Subpart 9.4.

SBA's FAR supplement largely repeats the debarment and suspension provisions contained in Subpart 9.4, and is, thus, unnecessary. The only portions that need to be retained from Subpart 2209.4 in SBA's regulations are (1) the identification of SBA's debarment and suspending official, and (2) the identification of SBA's Office of Hearings and Appeals (OHA) as the forum where debarment and suspension actions may be appealed. Neither need be retained in Subpart 2209.4. SBA's debarment and suspending official can be identified elsewhere in SBA's regulations at 13 CFR Part 101, and OHA's involvement in the debarment or suspension process can also be provided for elsewhere in SBA's regulations at 13 CFR Part 134. Pending such changes, the Administrator can make designations on a case-by-case basis if necessary.

Subpart 2209.4 also contains SBA's internal procedures pertaining to a debarment or suspension action. Because these are internal procedures only, they need not be set forth in regulatory form. Instead, SBA believes that such procedures would be more

appropriate as part of SBA Standard Operating Procedures.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule eliminates eight Parts of SBA's regulations that SBA has determined to be obsolete, unnecessary or duplicative. Contracting opportunities and financial assistance for small business will not be affected by this proposed rule. Therefore, it is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 106

Rent subsidies; Reporting and recordkeeping requirements; Small businesses.

13 CFR Part 109

Investment companies; Loan programs—business; Small businesses.

13 CFR Part 110

Investigations; Investment companies; Small businesses.

13 CFR Part 111

Environmental protection; Loan programs—business; Reporting and recordkeeping requirements.

13 CFR Part 128

Grant programs—business; Research; Small businesses.

13 CFR Part 129

Active Corps of Executives (ACE); Exports; Service Corps of Retired

Executives (SCORE); Small businesses; Technical assistance; Volunteers.

13 CFR Part 144

Disaster assistance; Loan programs—business; Small businesses.

48 CFR Part 2209

Administrative practice and procedure; Government procurement.

For the reasons set forth above and the authority of 15 U.S.C. 634(b)(6), SBA hereby amends Title 13 of the Code of Federal Regulations by removing parts 106, 109, 110, 111, 128, 129 and 144; and Title 48 of the Code of Federal Regulations by removing part 2209, and chapter 22, consisting of subchapter B, part 2209 is vacated.

Dated: September 14, 1995.

Philip Lader,

Administrator.

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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

RIN 0691-AA25

Direct Investment Surveys: Change in Reporting Requirements for the Annual Survey of U.S. Direct Investment Abroad (BE-11)

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules revise the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. The BE-11 is a mandatory survey of U.S. direct investment abroad conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The final rules will: Raise the overall exemption level for the survey, and the exemption level for reporting individual nonbank foreign affiliates on Forms BE-11B(LF) and BE-11C, from \$15 million to \$20 million; institute a short form, Form BE-11B(SF), for U.S. companies to report their majority-owned nonbank foreign affiliates with assets, sales, and net income in the \$20 to \$50 million range; and for fiscal year 1997 only, require the largest nonbank foreign affiliates owned between 10 and 20 percent to reported on Form BE-11C, along with affiliates owned between 20 and 50 percent. In all years, nonbank foreign affiliates owned between 20 and 50 percent by all U.S. Reporters (U.S.

parent companies) of the affiliate combined must be reported on Form BE-11C if their assets, sales, or net income exceed \$20 million. For fiscal year 1997 only, Form BE-11C must also be filed for nonbank foreign affiliates owned, directly and/or indirectly, at least 10 percent by one U.S. Reporter (i.e., U.S. parent company), but less than 20 percent by all U.S. Reporters of the affiliate combined, if the affiliate's total assets, sales, or net income exceed \$100 million.

EFFECTIVE DATE: These rules will be effective November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9800.

SUPPLEMENTARY INFORMATION: In the August 1, 1995 Federal Register, Volume 60, No. 147, 60 FR 39128, BEA published a notice of proposed rulemaking to revise the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

The BE-11 annual survey is part of BEA's regular data collection program for U.S. direct investment abroad. The survey is mandatory and is conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended).

The BE-11 survey consists of an instruction booklet, a claim for not filing the BE-11, and the following report forms:

1. Form BE-11A for reporting by a U.S. Reporter that is not a bank;
2. Form BE-11B(LF) (Long Form) for reporting majority-owned nonbank foreign affiliates with assets, sales, or net income greater than \$50 million (positive or negative);
3. Form BE-11B(SF) (Short Form) for reporting majority-owned nonbank foreign affiliates with assets, sales, or net income greater than \$20 million, but not greater than \$50 million (positive or negative); and
4. Form BE-11C for reporting minority-owned nonbank foreign affiliates.

A Form BE-11A must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE-11B(LF), BE-11B(SF), or BE-11C. Under these final rules, the exemption level for reporting individual foreign affiliates on Form BE-11B(LF) or (SF) or BE-11C—and, thus, for determining whether a U.S. person has to file Form BE-11A—

is raised from \$15 million to \$20 million. The exemption level is the level of a foreign affiliate's assets, sales, or net income below which a Form BE-11B(LF) or (SF) or BE-11C is not required. Raising the exemption level lowers the number of reports that otherwise must be filed, thus reducing the reporting and processing burdens. The new exemption level of \$20 million is the same as that recently approved for the related quarterly Form BE-577, Direct Transactions of U.S. Reporter With Foreign Affiliate.

In addition to raising the exemption level, these final rules will institute the BE-11B(SF) short form. Majority-owned nonbank foreign affiliates for which assets, sales, or net income is greater than \$20 million (positive or negative), but for which no one of these items is greater than \$50 million (positive or negative), will be required to be reported on Form BE-11B(SF). The use of a short form means that, for about 3,700 foreign affiliates, U.S. companies will now report significantly fewer data items than on the last (1993) annual survey.

For fiscal year 1997 only, these final rules will require the largest nonbank foreign affiliates owned between 10 and 20 percent to be reported on Form BE-11C, along with affiliates owned between 20 and 50 percent. In all years, reporting on Form BE-11C is required if an affiliate is owned between 20 and 50 percent by all U.S. Reporters combined and if its assets, sales, or net income exceed \$20 million. Primarily to reduce reporting burden of the survey, affiliates owned less than 20 percent do not have to be reported. However, U.S. direct investment abroad is defined by law to include all foreign business enterprises owned 10 (not 20) percent or more, directly or indirectly, by a U.S. person. BEA conducts periodic benchmark surveys of U.S. direct investment abroad (the BE-10), covering all foreign affiliates owned 10 percent or more. A benchmark survey for the year 1994 is now being conducted; the next survey will cover the year 1999. In order to maintain reliable estimates of data for the universe of all foreign affiliates in nonbenchmark years, reporting for the largest affiliates owned between 10 and 20 percent is needed for at least one year between benchmark surveys. Although the U.S. ownership percentages in these affiliates are low, some of the affiliates are very large and have a sizable impact on the estimates. Under these final rules, reporting of Form BE-11(C) for nonbank foreign affiliates owned directly and/or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent