

in currency swap transactions and otherwise?

3. What procedures should be established to demonstrate that the banks have adequate management expertise and internal controls to effectively evaluate counterparty risk prior to engaging in foreign currency deals?

D. Lead Managers and Performance Risk

After a foreign currency debt offering has been initiated and the securities have been allocated to the global dealers, performance risk becomes largely the responsibility of the "lead manager(s)" or lead global dealer(s). Lead managers can take back securities for their own account or reallocate them to other global dealers for sale.

Are there any risks unique to the selection of lead managers for non-dollar denominated debt offerings? If so, how should lead managers be selected for such offerings?

E. Other Risks of Non-dollar Denominated Offerings

There may be other risks of non-dollar denominated offerings, such as daylight overdrafts, market exposure, and performance of other agents (*e.g.*, paying, settlement, transfer, exchange, calculation agents).

1. How should such risks be managed and quantified?

2. What factors should be considered in developing criteria for selection and performance of other agents and who should approve their activities?

F. Other Comments and Information

The FCA invites any other pertinent comments and information that may assist it in developing appropriate guidance in the area of foreign denominated Systemwide debt security offerings.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration.

[FR Doc. 95-28585 Filed 11-22-95; 8:45 am]

BILLING CODE 6705-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 101, 133, and 135

Administration, Index to Approved SBA Reporting and Recordkeeping Requirements, and Intergovernmental Review of Small Business Administration Programs and Activities

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform directive, the Small Business Administration has completed a page-by-page and line-by-line review of all of its existing regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize all of present Parts 101, 133, and 135 and consolidate them into one new rule. As part of this streamlining process large portions of present Part 101 will be removed from the regulations and published in the U.S. Government Manual. Present Parts 133 and 135 will be revised, updated and consolidated with Part 101. Finally, the remaining sections have been rewritten into a straightforward "plain English" style of writing.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader (101), U.S. Small Business Administration, 409 3rd Street, SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cheri C. Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205-6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to Federal agencies directing them to simplify their regulations and eliminate those that are unnecessary. In response to this directive SBA completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated.

The proposed rule would revise, amend, reorganize, and consolidate all of present 13 CFR Parts 101, 133, and 135. This proposed new consolidated rule would reorganize Part 101 into four subparts and renumber all remaining sections to reflect this new configuration. Subpart "A" would cover the Agency's purpose, management, field office functions, use of its seal, the application of Federal law to SBA programs and activities, and what forms are authorized for public use. SBA proposes to update, streamline and revise these provisions. SBA proposes to eliminate the listing of specific program functions, field office locations and all internal delegations of authority from Part 101 as inappropriate for inclusion in regulatory form. The U.S. Government Manual (a special edition of the Federal Register) contains a listing of program functions. As required by the Freedom of Information

Act, SBA proposes to periodically publish field office locations and all internal delegations of authority as a notice in the Federal Register. Consistent with this change SBA proposes to include in the list of internal delegations of authority its designation of a debarring/suspending official for contractors doing business directly with SBA. In addition, and pursuant to new OMB regulations (see the Federal Register, Vol. 60, No. 110, pp. 30438-30456) SBA proposes to eliminate the list of specific SBA reporting and recordkeeping requirements approved by the Office of Management and Budget (OMB) contained in present Part 133. In lieu of this Part, SBA proposes to periodically publish an amended list of OMB approved reporting and recordkeeping requirements utilized by SBA as a notice in the Federal Register.

SBA proposes to eliminate present § 101.6, "Litigation", as unnecessary and to amend present § 101.9, which waives or limits the use of certain existing exemptions to the public participation requirements of the Administrative Procedure Act (APA), has also been amended. SBA proposes to eliminate the waiver of the "agency management and personnel" exemption and the limitations placed on the use of the "good cause" exemption as unnecessary and overbroad. Congress has determined that agency management and personnel matters have no significant substantive impact on the public and has accordingly exempted them from the APA. By eliminating the agency management and personnel exemption, SBA proposes to act consistently with the Congressional determination. SBA will continue to have the right to use the public participation procedures of APA for management and personnel matters if the SBA deems it necessary or desirable. The limitations presently placed on the use of the "good cause" exemption are unnecessary since SBA does not promulgate the type of regulations that require the use of this exemption. However, SBA proposes to maintain the exemption for matters relating to "public property, loans, grants, benefits, or contracts" as necessary and appropriate.

Subpart "B" would cover and update the provisions concerning the employment of fee counsel by SBA. Subpart "C" would provide an overview of the authority of the SBA Inspector General under the Inspector General Act of 1978 and eliminate references to the investigatory powers of the Administrator under the Small Business Act. Congress transferred those powers

to the Inspector General's Office in 1978. Subpart "C" would also provide guidance on the service of Inspector General subpoenas consistent with current policy. SBA proposes to eliminate present sections 101.8-4 "Non-Public formal investigation proceedings," 101.8-5 "Right to copy of data or transcript of testimony," and 101.8-8 "Information obtained in investigations," as unnecessary and redundant. Regulations promulgated under the Privacy Act, the Freedom of Information Act, the Inspector General Act, and the Trade Secrets Act, as well as the Federal Rules of Civil and Criminal Procedure, already provide regulatory guidance on these matters. SBA proposes to eliminate present sections 101.8-6, 101.8-7, and 101.8-10 relating to counsel for witnesses and witness fees as outdated and obsolete.

Subpart "D" would cover intergovernmental partnership procedures under the Intergovernmental Cooperation Act. These provisions are currently contained in present Part 135. This proposed subpart would streamline present Part 135 and consolidated it into Part 101, but without changing existing procedures. SBA proposes to eliminate present section 135.2, the definition section, as repetitive and unnecessary with the exception of the definition of the word "state". SBA added that definition in proposed section 101.402. SBA proposes to eliminate present sections 135.4 and 135.5, relating to the responsibilities of the Administrator, were eliminated since they are internal to SBA (and are more appropriate for Agency Standard Operating Procedures) and simply repeat the provisions of Executive Order No. 12372, as amended. SBA also proposes to eliminate "reserved" sections.

SBA proposes to assign to change the numbers assigned to all sections in the new rule to conform to the other parts of Title 13, to rewrite the new rule in the more straightforward and customer-oriented "plain English" style of writing in order to assist the public in reading and better understanding SBA's regulations. Finally, the proposed rule establishes consistency in the use of certain titles. For example, SBA proposes to change references to "the Agency," "the Small Business Administration," and "the Administration," in present Part 101 to "SBA," and references to "Central Office," to "Headquarters." SBA has also established uniformity in punctuation and capitalization.

Section by Section Analysis

The following is an analysis of the new provisions of SBA's regulations and

a discussion of the substantive effect of these changes, if any—

Proposed Section 101.100: SBA has expanded this provision from the present paragraph 101.1(a) to include a reference to SBA's role in providing financial, contractual, and business development assistance to small business concerns. The U.S. Government manual already publishes a detailed description of SBA's program functions and, therefore, the same information needs not be included in SBA's regulations.

Proposed Section 101.101: This provision would combine the description of management contained in present paragraph 101.1(c) with the list of the Administrator's responsibilities contained in present section 101.2. SBA proposes to rewrite the provision in plain English. SBA proposes to place the reference to the Deputy Administrator into a separate paragraph and to note that the Deputy is now appointed by the President.

Proposed Section 101.102: This section would set forth the current address of SBA's Headquarters in Washington, DC, which is presently in § 101.1(c).

Proposed Section 101.103: SBA proposes to abolish present section 101.3-1, which contains the list of SBA field offices, their addresses, phone numbers, and areas served. Instead, SBA will periodically publish this information as a notice in the Federal Register. The proposed provision refers the reader to the Federal Register and lists SBA's 800 number so customers can quickly and easily obtain the address and phone number of the SBA field office near them.

Proposed Section 101.104: This provision would be substantially the same as present section 101.3. However, SBA proposes to amend the text to reflect the regional offices' new limited role, the elimination of post-of-duty offices, and the existence of disaster area offices. SBA has rewritten proposed section in plain English.

Proposed Section 101.105: This provision is substantially the same as present section 101.5. However, SBA has added the Disaster Area Directors to the list of SBA officials with the authority to use SBA's official seal and rewritten the section in plain English.

Proposed Section 101.106: SBA has rewritten this provision, which is currently in § 101.1, in plain English and has made minor substantive changes to reflect recent case law concerning attempts to use state or local law to defeat liability incurred in obtaining or assuring SBA benefits or assistance. SBA has added contracts or

agreements to which SBA is a party, unless explicitly provided otherwise (see proposed § 101.106(b)(4)) to the list of documents or transactions that are construed and enforced in accordance with Federal law.

Proposed Section 101.107: SBA has consolidated present section 101.4 with present 13 CFR Part 133 in this provision and has rewritten it in plain English. SBA proposes to eliminate present § 133.1(a), a statement of intent. Moreover, pursuant to new OMB regulations, SBA proposes to eliminate the list of specific SBA reporting and recordkeeping requirements approved by OMB (present § 133.1(c)). Instead, SBA will periodically publish an amended list as a notice in the Federal Register.

Proposed Section 101.108: This provision is an amended version of present § 101.9. Presently, through § 101.9, SBA has waived the exemptions to the public participation requirements of the Administrative Procedure Act (5 U.S.C. 553) contained in subparagraph (a)(2), for matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." Consistent with other Federal departments and agencies that have voluntarily waived exemptions to the Act, SBA has determined that the only exemption that should exclude substantive rule-making from the public participation procedures of the APA is the exemption relating to "agency management or personnel." Consequently, the proposed provision would maintain the waiver for matters relating to public property, loans, grants, benefits, or contracts, while eliminating the rest of present § 101.9.

Proposed Section 101.109: With the adoption of the plain English "question and answer" format for many SBA regulations, it was necessary to make it clear that each section heading is to be interpreted as a part of the regulation. This section would state so explicitly.

Proposed Section 101.200: SBA has substantially reduced this provision in size and scope from present § 101.7 (a) & (b), and rewritten it in plain English. SBA eliminated the references to the employment of full time SBA attorneys and the private representation of applicants and borrowers as unnecessary and inconsistent with the purpose of the section.

Proposed Section 101.201: SBA has rewritten this provision, which replaces present § 101.7 (c) & (d), in plain English. However, SBA has not changed the substance of the duties and compensation provisions of the present paragraphs.

Proposed Section 101.300: This provision replaces present section 101.8-1 which fails to mention the investigatory authority granted to the Inspector General of SBA under the Inspector General Act of 1978. This provision states that the Inspector General has full authority to provide policy direction for, and to conduct audits, investigations, and inspections concerning the administration of SBA programs and operations.

Proposed Section 101.301: This provision states that all information or allegations of waste, fraud, or abuse in regard to SBA programs and operations should be directed to the Office of Inspector General.

Proposed Section 101.302: This provision recites the scope of authority, or specific powers, the Inspector General possesses under the Inspector General Act and has been written in plain English.

Proposed Section 101.303: SBA has rewritten this provision in plain English and amended it to reflect current policy relating to the service of Inspector General subpoenas, but it is otherwise the same as present § 101.8-9.

Proposed Section 101.400: This provision is an amended version of present section 135.1, and states the purpose of the regulations contained in proposed Subpart D. SBA has rewritten it in plain English.

Proposed Section 101.401: This provision is the same as present section 135.3 with only minor changes.

Proposed Section 101.402: This provision is the same as present section 135.6 except that SBA has rewritten it in plain English and has defined "state" at the end of the section.

Proposed Section 101.403: This provision combines present sections 135.7 and 135.8 into one new section concerning the notice and comment procedures established by SBA under the Intergovernmental Cooperation Act. SBA has rewritten the proposed section in plain English.

Proposed Section 101.404: This provision is the same as present section 135.9 except that SBA has rewritten it in plain English.

Proposed Section 101.405: This provision is the same as present section 135.10 except that it has been rewritten in plain English.

Proposed Section 101.406: This provision is the same as present section 135.11 except that it has been rewritten in plain English.

Proposed Section 101.407: This provision is the same as present section 135.13 except that it has been rewritten in plain English.

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. 35)

SBA certifies that this proposed rule would 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 will consolidate three Parts of SBA's current regulations, move substantial amounts of general organizational information from SBA's regulations to the U.S. Government Manual, and rewrite the remaining provisions into plain English. Contracting opportunities and financial assistance for small business would 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. § 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements. For purposes of Executive Order #12612, SBA certifies that this rule would 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 101

Administrative practice and procedure; Authority delegations (Government agencies); Investigations; Organization and functions (Government agencies); Reporting and recordkeeping requirements.

13 CFR Part 133

Reporting and recordkeeping requirements.

13 CFR Part 135

Intergovernmental relations.

For the reasons set forth above, SBA hereby proposes to amend 13 CFR Chapter I as follows:

1. Part 101 would be revised to read as follows:

PART 101—ADMINISTRATION

Subpart A—Overview

Sec.

- 101.100 What is the purpose of SBA?
- 101.101 Who manages SBA?
- 101.102 Where is SBA's Headquarters located?
- 101.103 Where are SBA's field offices located?
- 101.104 What are the functions of SBA's field offices?
- 101.105 Who may use SBA's official seal and for what purposes?
- 101.106 Does Federal law apply to SBA programs and activities?
- 101.107 What SBA forms are authorized for public use?
- 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?
- 101.109 Do SBA regulations include the section headings?

Subpart B—Employment of Fee Counsel

Sec.

- 101.200 When does SBA hire fee counsel?
- 101.201 What are the minimum terms of fee counsel's employment?

Subpart C—Inspector General

Sec.

- 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?
- 101.301 Who should receive information or allegations of waste, fraud, and abuse?
- 101.302 What is the scope of the Inspector General's authority?
- 101.303 How are Inspector General subpoenas served?

Subpart D—Intergovernmental Partnership

Sec.

- 101.400 What is the purpose of this subpart?
- 101.401 What programs and activities of SBA are subject to this subpart?
- 101.402 What procedures apply to the selection of SBA programs and activities?
- 101.403 What are the notice and comment procedures?
- 101.404 How does the Administrator receive comments?
- 101.405 How does the Administrator respond to comments?
- 101.406 What are the Administrator's responsibilities in interstate situations?
- 101.407 May the Administrator waive these regulations?

Authority: Secs. 4 and 5, Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93-386; sec. 306, Pub. L. 98-270, 98 Stat. 161; Pub. L. 96-511, sec. 5, 94 Stat. 2826 (44 U.S.C. 3512, as amended); 5 U.S.C. 552 as amended; sec. 3(1), Pub. L. 93-386, 88 Stat. 742 (15 U.S.C. 634(b)(1), as amended); Pub. L. 95-452, 92 Stat. 1101 (5 U.S.C. App. 3 secs. 2, 4(a), 6(a), and 9(a)(1)(T), as amended); Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec.

401, Pub. L. 90-577, 82 Stat. 1103 (31 U.S.C. 6506, as amended); unless otherwise noted.

PART 101—ADMINISTRATION

Subpart A—Overview

§ 101.100 What is the purpose of SBA?

The U.S. Small Business Administration (SBA) aids, counsels, assists, and protects the interests of small business concerns, and advocates on their behalf within the Government. It also helps victims of disasters. It provides financial assistance, contractual assistance, and business development assistance. For a more detailed description of the functions of SBA see The United States Government Manual, a special publication of the Federal Register; which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

§ 101.101 Who manages SBA?

(a) An Administrator, appointed by the President with the advice and consent of the Senate, manages SBA. The Administrator—

(1) Is responsible to the President and Congress for exercising direction, authority, and control over SBA.

(2) Determines and approves all policies covering SBA's programs to aid, counsel, assist, and protect the interests of the nation's small businesses.

(3) Employs or appoints employees necessary to implement the Small Business Act, as amended, the Small Business Investment Act, as amended, and other laws and directives.

(4) Delegates certain activities, by issuing regulations or otherwise, to Headquarters and field positions (see The United States Government Manual, a special publication of the Federal Register, which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

(b) A Deputy Administrator, appointed by the President with the advice and consent of the Senate, serves as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator.

§ 101.102 Where is SBA's Headquarters located?

The Headquarters of SBA is at 409 3rd Street, SW., Washington, DC 20416.

§ 101.103 Where are SBA field offices located?

A list of SBA's field offices with addresses, phone numbers and jurisdictions served is periodically published in the Federal Register. You

can also obtain the address and phone number of an SBA office to serve you by calling 1-800-8-ASK-SBA or 1-800-827-5722.

§ 101.104 What are the functions of SBA field offices?

(a) *Regional offices.* Regional offices are managed by a Regional Administrator who is responsible to Headquarters. They are located in major cities and have geographical boundaries which cover multi-state areas. Regional offices exercise limited authority over field activities within their region.

(b) *District offices.* District offices are managed by a District Director and are located in cities within a region. District offices are responsible to Headquarters and to a regional office. Within their delegated authority, district offices have authority for—

(1) Conducting all program delivery activities within the district boundaries;

(2) Supervising all branch offices located within the district boundaries; and

(3) Providing subordinate branch offices with the technical capability necessary to execute assigned programs.

(c) *Branch offices.* Branch offices are managed by a Branch Manager and are located in cities within a district. Branch offices are responsible to the district office within whose boundaries it is located. Branch offices execute one or more elements of the business or disaster loan programs and have limited authority for program execution.

(d) *Disaster area offices.* Disaster area offices are managed by an Area Director and are located in cities within defined geographical areas. Disaster area offices are responsible to Headquarters and provide loan services to victims of declared disasters. Temporary disaster offices are often established in areas where disasters have occurred.

(e) *Responsibilities.* Each field office has responsibilities within a defined geographical area as periodically set forth in the Federal Register.

§ 101.105 Who may use SBA's official seal and for what purposes?

(a) The SBA's seal shall be in a manner and form set forth as follows:

Note: The seal is not published in this proposed rule, but will appear in the final rule.

(b) The Administrator, Deputy Administrator, General Counsel, Assistant Administrator for Administration, Assistant Administrator for Hearings and Appeals, Associate Administrator for Minority Enterprise Development, Regional Administrators, District Directors, Branch Managers, the

Inspector General, and Disaster Area Directors are authorized to—

(1) Certify and authenticate originals and copies of any books, records, papers, or other documents on file within SBA, or extracts taken from them.

(2) Certify the nonexistence of records.

(3) Affix the Seal of SBA to all such certifications, including the purposes authorized by 28 U.S.C. 1733.

§ 101.106 Does Federal law apply to SBA programs and activities?

(a) SBA makes loans and provides other services that are authorized and executed under Federal programs adopted by Congress to achieve national purposes.

(b) The following are construed and enforced in accordance with Federal law—

(1) Instruments evidencing a loan;

(2) Security interests in real or personal property payable to or held by SBA or the Administrator such as promissory notes, bonds, guarantee agreements, mortgages, and deeds of trust;

(3) Other evidences of debt or security;

(4) Contracts or agreements to which SBA is a party, unless expressly provided otherwise.

(c) To the extent feasible, SBA uses local or state procedures, especially for recordation and notification purposes, in implementing and facilitating SBA's loan programs. This use of local or state procedures is not a waiver by SBA of any Federal immunity from any local or state control, penalty, tax, or liability.

(d) No person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, is entitled to claim or assert any local or state law to defeat the obligation incurred in obtaining or assuring such Federal benefit or assistance.

§ 101.107 What SBA forms are approved for public use?

(a) SBA utilizes forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), as amended. You may obtain approved forms for use by the public when applying for or obtaining SBA assistance, or when providing services for SBA, from any field office (see § 101.103). You may also use forms which you have prepared yourself, or have obtained from another source, if those forms are identical in every

respect to the form approved by OMB for the same purpose.

(b) Any member of the public who has reason to believe any SBA office or agent is in violation of the Public Protection Clause of the Paperwork Reduction Act (44 U.S.C. 3512 and see 5 CFR 1320.6) should notify SBA. Direct such comments to the Assistant Administrator for Administration at 409 3rd Street, SW., Washington, DC 20416.

§ 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?

Yes. The public participation requirements prescribed by the Administrative Procedure Act, 5 U.S.C. 553, will be followed by SBA in rulemakings relating to public property, loans, grants, benefits, or contracts.

§ 101.109 Do SBA regulations include the section headings?

Yes. All SBA regulations must be interpreted as including the section headings.

Subpart B—Employment of Fee Counsel

§ 101.200 When does SBA hire fee counsel?

(a) *Business Loans.* SBA may hire fee counsel to represent it in regard to business loans when the volume of activity in an area is not sufficient to require a full-time SBA employee, or the area is too remote for economical use of a full-time SBA employee.

(b) *Disaster Loans.* SBA may hire fee counsel in regard to disaster loans when the disaster presents an emergency and a volume of activity that cannot be promptly and economically serviced by available SBA employees.

§ 101.201 What are the minimum terms of fee counsel's employment?

(a) Fee counsel must perform all requested work in compliance with SBA's regulations, policies, and instructions, and take such action as is legally required under the Small Business Act, the Small Business Investment Act, and other laws applicable to SBA.

(b) Fee counsel must adhere to the highest standards of professional conduct and maintain appropriate confidentiality proper to the attorney-client relationship.

(c) Fee counsel acts under the supervision of the SBA General Counsel (and designees.)

(d) Fee counsel usually is compensated at an hourly rate as approved by SBA. Contingency fee agreements may occasionally be used if approved by the General Counsel.

(e) Either party may terminate the employment upon written notice.

Subpart C—Inspector General

§ 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) authorizes SBA's Inspector General to provide policy direction for, and to conduct, supervise, and coordinate such audits, investigations, and inspections relating to the programs and operations of SBA as appears necessary or desirable.

§ 101.301 Who should receive information or allegations of waste, fraud and abuse?

The Office of Inspector General should receive all information or allegations of waste, fraud, or abuse regarding SBA programs and operations.

§ 101.302 What is the scope of the Inspector General's authority?

To obtain the necessary information and evidence, the Inspector General (and designees) have the right to:

(a) Have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to SBA and relating to SBA's programs and operations;

(b) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence;

(c) Administer oaths and affirmations or take affidavits; and

(d) Request information or assistance from any Federal, state, or local government agency or unit.

§ 101.303 How are Inspector General subpoenas served?

(a) Service of subpoenas may be effected by any of the following means—

(1) If by mail, a copy of the subpoena must be addressed to the person, partnership, corporation, or unincorporated association to be served at a residence or usual dwelling place, or a principal office or place of business, and mailed first class by registered or certified mail, (postage prepaid, return receipt requested), or by a commercial or U.S. Postal Service overnight or express delivery service.

(2) If by personal delivery, a copy of the subpoena must be delivered to the person to be served, or to a member of the partnership to be served, or to an executive officer or a director of the corporation or unincorporated association to be served, or to a person authorized by appointment or by law to receive process for the person or entity named in the subpoena.

(3) If by delivery to an address, a copy of the subpoena must be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association to be served, or at the residence or usual dwelling place of the person, member of the partnership, or officer or director of the corporation or unincorporated association to be served, with someone of suitable age and discretion.

(b) Proof of service—

(1) When service is by registered, certified, overnight, or express mail, it is complete upon delivery of the document by the Postal Service or commercial service.

(2) The return Postal Service receipt for a document that was registered or certified and mailed, the signed receipt for a document delivered by an overnight or express delivery service, or the Return of Service completed by the individual serving the subpoena by personal delivery shall be proof of service.

Subpart D—Intergovernmental Partnership

§ 101.400 What is the purpose of this subpart?

(a) This subpart implements section 401 of the Intergovernmental Cooperation Act. Section 401 creates intergovernmental partnership and strengthens Federalism by relying on state processes and state, area-wide, regional, and local coordination for the review of proposed Federal financial assistance and direct Federal development.

(b) While guiding SBA's management, this subpart does not create any right or benefit enforceable at law against SBA or its officers or employees.

§ 101.401 What programs and activities of SBA are subject to this subpart?

The Administrator publishes in the Federal Register a list of SBA's programs and activities that are subject to this subpart.

§ 101.402 What procedures apply to the selection of SBA programs and activities?

(a) A state may—

(1) Select any program or activity published in the Federal Register under § 101.401 for inter-governmental review (each state, before selecting programs and activities, should consult with local elected officials. A state adopting a process must notify the Administrator of the SBA programs and activities selected); and

(2) Notify the Administrator of changes in its selections at any time. For each change, the state submits to the Administrator an assurance that it

consulted with local elected officials regarding the change.

(b) SBA may establish deadlines by which states must inform the Administrator of changes in their program selections.

(c) After receiving notice of a state's selections, the Administrator uses a state's process as soon as feasible depending on individual programs and activities.

(d) "State" means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 101.403 What are the notice and comment procedures?

(a) The Administrator provides notice to directly affected state, area-wide, regional, and local entities in a state of proposed SBA financial assistance or direct SBA development if—

(1) The state has not adopted a process under Executive Order No. 12372; or

(2) The assistance or development involves a program or activity not selected for the state process.

(b) Notice may be made by publication in the Federal Register or other means as SBA deems appropriate.

(c) Except in unusual circumstances the Administrator gives state processes or directly affected state, area-wide, regional, and local officials and entities at least 60 days to comment on proposed SBA financial assistance or direct SBA development.

(d) In cases where SBA delegates the review, coordination, and communication authority under this subpart, this section also applies.

§ 101.404 How does the Administrator receive comments?

(a) The Administrator follows the procedures of § 101.405 if—

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 101.402(a).

(b)(1) The single point of contact is not obligated to transmit comments from state, area-wide, regional, or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, area-wide, regional, and local officials and entities may submit comments to SBA.

(d) If a program or activity is not selected for a state process, state, area-wide, regional, and local officials and entities may submit comments to SBA. In addition, if a state process recommendation for a non-selected program or activity is transmitted to SBA by the single point of contact, the Administrator follows the procedures of § 101.405.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under this subpart and for which the Administrator is not required to apply the procedures of § 101.405 when such comments are provided by a single point of contact directly to SBA by a commenting party.

§ 101.405 How does the Administrator respond to comments?

(a) If a state process provides a recommendation to SBA through its single point of contact, the Administrator

(1) Accepts the recommendation; or

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in a form the Administrator deems appropriate. The Administrator may also supplement the written explanation by telephone or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that—

(1) SBA will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) Because of unusual circumstances the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing.

§ 101.406 What are the Administrator's responsibilities in interstate situations?

The Administrator is responsible for—

(a) Identifying proposed SBA financial assistance and direct SBA development that have an impact on interstate areas;

(b) Notifying appropriate officials and entities in states which have adopted a

process and selected an SBA program or activity;

(c) Making efforts to identify and notify the affected state, area-wide, regional, and local officials and entities in states that have not adopted a process or selected an SBA program or activity;

(d) Using the procedures of § 101.405 if a recommendation of a designated area-wide agency is transmitted by a single point of contact in cases in which the review, coordination, and communication with SBA has been delegated; and

(e) Using the procedures of § 101.405 if a state process provides a state recommendation to SBA through a single point of contact.

§ 101.407 May the Administrator waive these regulations?

The Administrator may waive any provision of §§ 101.400 through and including 101.406 in an emergency.

PARTS 133 AND 135—[REMOVED]

2. Parts 133 and 135 are removed.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95-28445 Filed 11-22-95; 8:45 am]

BILLING CODE 8025-01-P

13 CFR Parts 102 and 137

Freedom of Information and Privacy Act of 1974

AGENCY: Small Business Administration.

ACTION: Proposed 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. This proposed rule would delete duplicative statutory and unnecessary language and rewrite the remainder in plain English. There are some substantive changes, as follows:

The proposed rule revises the Agency's regulations implementing Executive Order 12600 and would require SBA to give submitters of information the opportunity, at the time they submit the information, to identify information the disclosure of which would cause them substantial competitive harm.

The rule would establish a procedure for appealing FOIA fee determinations which parallels the procedure for appealing a decision to withhold information.