

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.

The rule would remove the Program Official from the Privacy Act management function and vest all responsibilities in Systems Managers and the Privacy Act Officer.

Part 137 deals with the treatment of classified information. Since SBA generates no such documents, SBA regulations need deal only with classified information which SBA acquires from other Agencies. The rule would place the needed portion of Part 137 in Part 102 and eliminate the remainder.

There are other, minor changes detailed below.

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, (102), Small Business Administration, 409 3rd Street SW., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Timothy C. Treanor, Attorney Advisor, Office of General Counsel, at (202) 205-6885.

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 reorganized and simplified Part 102. A conversion table of distribution follows:

	Present part 102	Proposed part 102	Present part 102	Proposed part 102
	§ 102.5(d)	§ 102.6(a) § 102.6(d)(1)(i) § 102.6(d)(2)(i)	§ 102.22(b)(1)	§ 102.32(a) deleted
	§ 102.5(e)	§ 102.7	§ 102.22(b)(2)	deleted
	§ 102.5(f)	§ 102.6(d)(1)(ii) § 102.6(d)(2)(ii)	§ 102.22(b)(3)	deleted
	§ 102.5(g)	§ 102.6(d)(4)	§ 102.22(b)(4)	deleted
	§ 102.5(h)	§ 102.6(f)	§ 102.22(b)(5)	deleted
	§ 102.5(i)(1)	§ 102.6(d)(1)(i) § 102.6(d)(2)(i)	§ 102.22(c)	deleted
	§ 102.5(i)(2)	§ 102.6(c)	§ 102.22(d)	§ 102.29
	§ 102.5(i)(3)	deleted	§ 102.23UOP	§ 102.22(a)
	§ 102.5(i)(4)	deleted	§ 102.23(a)	§ 102.22(b)
	§ 102.6(a)	deleted	§ 102.23(b)	§ 102.22(c)
	§ 102.6(b)	§ 102.9(b)	§ 102.23(c)	§ 102.22(d)
	§ 102.6(c)	§ 102.9(c)(1)	§ 102.23(d)	§ 102.22(e)
	§ 102.6(d)	§ 102.9(a)	§ 102.23(e)	§ 102.22(f)
	§ 102.6(e)(1)	§ 102.9(d)	§ 102.23(f)	§ 102.22(g)
	§ 102.6(e)(2)	§ 102.9(f)(1)	§ 102.23(g)	§ 102.22(h)
	§ 102.6(e)(3)	§ 102.9(e)	§ 102.23(h)	§ 102.22(i)
	§ 102.7(a)(1)	deleted	§ 102.23(i)	§ 102.22(j)
	§ 102.7(a)(2)	deleted	§ 102.23(j)	§ 102.22(k)
	§ 102.7(a)(3)	deleted	§ 102.23(k)	§ 102.22(l)
	§ 102.7(a)(4)	deleted	§ 102.24	§ 102.28
	§ 102.7(a)(5)	§ 102.8(d)	§ 102.25	deleted
	§ 102.7(a)(6)	§ 102.8(b)(1)	§ 102.26(a)	deleted
	§ 102.7(a)(7)	§ 102.8(b)(2)	§ 102.26(b)(UOP)	deleted
	§ 102.7(a)(8)	§ 102.8(b)(4)	§ 102.26(b)(1)	deleted
	§ 102.7(b)(1)	§ 102.8(a)(1)	§ 102.26(b)(2)	deleted
	§ 102.7(b)(2)	§ 102.8(a)(2)	§ 102.26(b)(3)	§ 102.60
	§ 102.7(b)(3)	§ 102.8(a)(3)	§ 102.26(b)(4)	§ 102.47(a)
	§ 102.7(b)(4)	§ 102.8(a)(4)	§ 102.26(c)	§ 102.47(b)
	§ 102.7(b)(5)(i)	§ 102.8(a)(5)	§ 102.26(b)(1)	deleted
	§ 102.7(b)(5)(ii)	§ 102.8(a)(6)	§ 102.27(a)	§ 102.61(a)
	§ 102.7(b)(6)	§ 102.8(b)(uosp)	§ 102.27(b)(UOP)	§ 102.61(b)
		§ 102.8(c)	§ 102.27(b)(1)	§ 102.61(a)
		§ 102.8(e)	§ 102.27(b)(2)	§ 102.61(a)
		§ 102.8(h)	§ 102.27(b)(3)	§ 102.61(a)
	§ 102.7(b)(7)	§ 102.8(g)	§ 102.27(c)	§ 102.61(a)
	§ 102.7(c)(1)	§ 102.8(d)	§ 102.27(d)	§ 102.61(a)
	§ 102.7(c)(2)	§ 102.8(b)(uosp)	§ 102.27(e)	§ 102.61(a)
		§ 102.8(b)(1-3)	§ 102.27(f)	§ 102.61(a)
	§ 102.7(c)(3)	§ 102.8(b)(uosp)	§ 102.27(g)	§ 102.61(a)
		§ 102.8(c)	§ 102.28(a)	§ 102.34(a)
		§ 102.8(e)		§ 102.34(b)
		§ 102.8(h)	§ 102.28(b)	§ 102.34(b)
	§ 102.7(c)(4)	§ 102.8(l)(1)	§ 102.28(c)	§ 102.34(c)
	§ 102.7(d)(1)	§ 102.8(m)	§ 102.28(d)	§ 102.36(b)
	§ 102.7(d)(2)	§ 102.8(n)	§ 102.28(e)	§ 102.35
	§ 102.7(d)(3)	§ 102.8(i)		§ 102.36
	§ 102.7(d)(4)(i)	§ 102.8(j)	§ 102.29(a)	§ 102.36
	§ 102.7(d)(4)(ii)	§ 102.8(k)	§ 102.29(a)	§ 102.38(c)
	§ 102.7(d)(4)(iii)	§ 102.3(c)	§ 102.29(b)	§ 102.39
	§ 102.7(d)(5)	deleted	§ 102.29(c)	§ 102.41
	§ 102.7(e)	§ 102.8(o)	§ 102.29(d)	§ 102.40
	§ 102.8	§ 102.13	§ 102.30(a)	deleted
	§ 102.20(a)	§ 102.20(a)(1)	§ 102.30(b)	§ 102.42
	§ 102.20(b)	§ 102.20(a)(2)	§ 102.30(c)	§ 102.43
	§ 102.20(c)	§ 102.20(a)(3)	§ 102.30(d)	§ 102.46
	§ 102.20(d)	§ 102.20(b)	§ 102.31(a)	§ 102.47
	§ 102.20(e)	§ 102.20(c)		§ 102.47
	§ 102.21(a)	deleted		§ 102.47(a)
	§ 102.21(b)	deleted		§ 102.47(b)
	§ 102.21(c)	§ 102.26	§ 102.31(b)	§ 102.48
	§ 102.21(d)	deleted	§ 102.31(c)	§ 102.49(c)
	§ 102.21(e)	§ 102.24	§ 102.31(d)	§ 102.50
	§ 102.21(f)	§ 102.25	§ 102.31(e)	§ 102.51
	§ 102.21(g)	deleted	§ 102.31(f)	§ 102.52
	§ 102.21(h)	deleted		§ 102.53(b)(1)
	§ 102.22(a)(1)	§ 102.32(b)		§ 102.53(c)(2)
	§ 102.22(a)(2)	§ 102.32(c)	§ 102.32(a)(1)	§ 102.58(b)(3)
	§ 102.22(a)(3)	§ 102.32(d)	§ 102.32(a)(2)	§ 102.58(c)(2)
	§ 102.22(a)(4)	§ 102.32(e)	§ 102.32(a)(3)	§ 102.21(a)
	§ 102.22(a)(5)	deleted	§ 102.32(a)(4)	§ 102.21(b)
	§ 102.22(a)(6)	deleted	§ 102.32(b)	§ 102.55
	§ 102.22(a)(7)	deleted	§ 102.32(c)	deleted
				deleted
				§ 102.32(f)

Present part 102	Proposed part 102
§ 102.1(a)	§ 102.1
§ 102.1(b)	deleted
§ 102.2	deleted
§ 102.3(a)	deleted
§ 102.3(b)	deleted
§ 102.3(c)	deleted
§ 102.3(d)	deleted
§ 102.3(e)	deleted
§ 102.3(f)	deleted
§ 102.3(g)	deleted
§ 102.3(h)	deleted
§ 102.3(i)	deleted
§ 102.3(j)	deleted
§ 102.3(k)	deleted
§ 102.3(l)	§ 102.10
§ 102.4(a)	deleted
§ 102.4(b)	§ 102.2(a)
§ 102.4(c)	§ 102.2(b)
§ 102.4(d)	deleted
§ 102.4(e)(1)	§ 102.3(a) § 102.3(c)
§ 102.4(e)(2)	§ 102.4(b)
§ 102.4(e)(3)	§ 102.5
§ 102.5(a)	deleted
§ 102.5(b)(1)	§ 102.6(a)
§ 102.5(b)(2)	deleted
§ 102.5(b)(3)	§ 102.6(b)
§ 102.5(c)	deleted

Present part 102	Proposed part 102
§ 102.33(a)	§ 102.23(a)
§ 102.33(b)	deleted
§ 102.33(c)	§ 102.56
§ 102.33(d)	deleted
§ 102.33(e)	§ 102.57
§ 102.33(f)	§ 102.58
§ 102.33(g)	§ 102.58(d)
	§ 102.58(e)
§ 102.33(h)	deleted
§ 102.34	§ 102.59
§ 102.35(a)	§ 102.27(d)(uosp)
§ 102.35(b)	§ 102.27(d) (1-3)
§ 102.35(c)	§ 102.27(e)
§ 102.36(a)	§ 102.27(a)
§ 102.36(b)	§ 102.27(b)
§ 102.36(c)	§ 102.27(c)
§ 102.37	§ 102.54

The principal substantive changes are as follows: (1) *Changes in Implementation of Executive Order 12600*. Under the present regulations, when someone requests business information even arguably exempt under 5 U.S.C. § 552(b)(4), SBA notifies the submitter and allows five working days to identify information the disclosure of which would cause substantial competitive harm. If SBA decides that it must disclose such information anyway, SBA must give the submitter an additional five working days to respond. The operation of this regulation makes it difficult for SBA to respond to FOIA requests within the statutory ten working day limit. To facilitate FOIA's ten working day requirement, SBA proposes to ask the submitter to identify this confidential information at the time of submission, and that the Agency thereafter would notify the submitter only if it intended to disclose information previously identified as confidential, or other information the release of which the Agency believed would cause substantial competitive harm. This proposed regulation would also provide that where SBA decided to release information the disclosure of which the submitter sought to prevent, SBA would give the submitter the "maximum notice possible before disclosure without violating the time constraints imposed by the Freedom of Information Act" rather than five working days. SBA proposes this change so that the Agency can assure that its responses to FOIA requests remain within the ten working day time limits imposed by the Freedom of Information Act itself.

(2) *Adoption of an Appeals Process for Fee Determinations*. This rule would establish a quick and simple appeal procedure for requesters who are dissatisfied with the fee SBA has charged for their FOIA requests. The procedure parallels the process by

which requesters may appeal SBA decisions to withhold information. Interest would begin to accrue 31 days after SBA's response to the request, regardless of a fee appeal.

(3) *Elimination of Program Official from Privacy Act Regulations*. Under current Privacy Act regulations, Systems Managers function as the primary liaison with Privacy Act requesters, conveying requests to Program Officials and responses to the requesters. SBA has decided to streamline by empowering Systems Managers to assume the Program Official's responsibilities directly. Under the new rule, requesters will direct their requests to Systems Managers, who will make initial decisions as to access and amendment.

(4) *Elimination of Part 137*. SBA enacted Part 137 in 1984 in response to Executive Order 12356, which required Agencies to have regulations dealing with their handling of classified material. Since SBA has no classification authority, SBA has decided to repeal that portion of the existing regulation, maintaining only a provision (§ 102.12) which refers requests for any classified material in SBA's possession back to their originating agencies.

SBA also proposes some minor changes proposed to its fee structure. SBA currently waives fees less than \$15; the proposed regulations would waive fees less than \$25. SBA currently charges \$18 an hour for professional record searches and \$9 for clerical searches. Since SBA generally does not use clerical personnel to perform manual searches, and computer searches are billed separately, at cost, the proposed regulations eliminate the reference to clerical searches and bill all searches at \$18 an hour.

Section By Section Analysis

Proposed § 102.1 describes the purpose of Subpart A: to describe SBA's compliance with the Freedom of Information Act.

Proposed § 102.2 describes what documents requesters can obtain by going to offices and what documents requesters must obtain through writing. Proposed § 102.2 directs the requester to the nearest District Office or to the Agency's FOIA office; either will forward the request to the proper office.

Proposed § 102.3 describes how long SBA may take to respond to a FOIA request. Paragraphs (a) and (c) set forth the statutory requirements and (with respect to the fee portion) OMB requirements for all Agencies (See 52 FR 10012). Paragraph (b), which provides that the clock does not begin to run

until the proper office receives the request, replicates the present regulation.

Proposed § 102.4 describes possible responses to a FOIA request, including notices of appeal rights. Proposed § 102.5 makes it clear that SBA will supply only that information that is in the office as of the close of the day upon which the office receives the request. None of these proposed sections vary from the current regulations.

Proposed §§ 102.6 and 102.8 describe SBA's compliance with Executive Order 12600. Businesses submitting information after January 1, 1996 can designate items whose disclosure would cause them substantial competitive harm. If SBA proposes to release information so designated, or other information which SBA believes could cause such harm, SBA will give notice to the submitter and allow five business days to submit reasons why SBA should not release the information. If SBA decides to release the information over the submitter's objections, SBA then will give the submitter as much additional notice as feasible consistent with SBA's responsibilities under the Freedom of Information Act. With respect to information submitted prior to January 1, 1996, SBA's procedure will remain the same as it is now, except that the notice SBA gives in the event that it intends to release information over the submitter's objection will now be the maximum notice consistent with the Agency's obligations under FOIA, rather than five working days.

Proposed § 102.8 sets forth a fee schedule which, with two minor exceptions, remains the same: (1) A waiver of fees under \$25, instead of the present regulation's \$15; (2) A charge of \$18 per hour for manual searches rather than \$9 per hour for clerical searches and \$18 per hour for professional searches. At SBA, professionals typically conduct manual searches. Computer searches are billed at SBA's actual cost and handled separately in the regulations. By setting all search fees at \$18 per hour, SBA can simplify recordkeeping. The new regulation also codifies the present practice of charging the actual cost of certifying records and sending records (at the request of the FOIA requester) by other than first class mail. The remainder of the proposed regulation simply restates the current regulation.

Proposed § 102.9 sets forth a proposed appeal system for both denial of records and for fees which parallels the current system for appealing SBA decisions to withhold information.

Proposed § 102.10 matches the present regulations concerning the Public Index.

Proposed § 102.11 notes that if the requester asks for a document generated by another Agency, SBA will forward it to the Agency which generated the document. This process implements policy guidance which the Department of Justice has given Agencies on this issue.

Proposed § 102.12 deals with a particular sort of document generated from another Agency: classified documents. This section is all that remains of present Part 137. SBA had previously issued that Part to establish the system by which SBA would manage classified documents, as required by Executive Order 12356. However, SBA does not generate classified documents and has neither classification nor declassification authority. Accordingly, any classified documents in SBA's possession were generated by another Agency. SBA will refer any request for such a document to the generating Agency, just as it does with all documents generated by another Agency.

Proposed § 102.13 matches the present regulations concerning compulsory process against SBA, except that the Associate General Counsel for Litigation may under the proposed regulation delegate authority to resist a subpoena to field counsel.

SBA has substantially reorganized Subpart B, but without significant substantive changes. Proposed § 102.20 describes the purpose of the Privacy Act subpart. Proposed § 102.21 sets forth the basic principles of privacy maintenance. Proposed § 102.22 describes the circumstances, unchanged from the present, under which SBA will disclose records. In proposed § 102.23, SBA notes that personnel files are not governed by Part 102 but rather by 5 CFR Parts 293 and 297. It also notes that EEO Complaint files are governed by 29 CFR Part 1611. This is the state of the law; the proposed regulation corrects anachronistic references in present Part 102. Proposed §§ 102.24, 102.25, and 102.26 provide definitions for terms used in the regulations. Proposed § 102.27 describes records which are exempt from the Privacy Act under certain circumstances, or which are exempt on a regular basis from certain provisions of the Privacy Act for all purposes. This section replicates present §§ 102.35 and 102.36, with the single exception that the new regulation does not exempt EEO Complaint files, Litigation and Claims files, Standards of Conduct files, and Civil Rights Compliance files from the full range of

Privacy Act provisions since they are not records maintained by the Inspector General. Proposed § 102.28 makes it clear that the Privacy Act does not give individuals access to records compiled for civil litigation.

Proposed §§ 102.29 through 102.33 establish the responsibilities of SBA employees who administer the Privacy Act. With one important exception, these responsibilities remain the same. The present regulations divide Privacy Act responsibilities among the Privacy Act Officer, the Program Official for each program or office, and the Systems Manager for each program or office. The new regulations eliminate Program Officials from Privacy Act responsibilities and allocate most of their responsibilities to the Systems Managers. This will free Program Officials to discharge their other substantive SBA duties.

Proposed §§ 102.34–102.41 provide instructions for a person who has records in an SBA system of records and who wants to look at those records. Proposed §§ 102.42–102.53 provide instructions for a person who wishes to have his SBA record amended. Proposed § 102.54 governs judicial review. None of these sections reflect any substantive changes from the present regulations.

Proposed §§ 102.55 through 102.60 group together miscellaneous commonly-asked Privacy Act questions which the regulations currently treat in disparate sections of Part 102. These proposed regulations do not enact any substantive changes in the answers to those questions, except that (1) SBA will no longer provide a first copy of files requested under the Privacy Act for free, (2) SBA will waive fees under \$25 (instead of the current \$15) for Privacy Act requests and, (3) noncustodial parents will not be allowed to obtain their children's records under the Privacy Act.

SBA's current regulations regarding the Computer Matching and Privacy Protection Act of 1988 are moved to § 102.61. Under the proposed regulation, the statutory provisions are incorporated by reference rather than separately set out.

The proposed regulations eliminate references to various recordkeeping and reporting requirements which have been mandated by statute; since the statute imposes those requirements on SBA it would be superfluous to restate them in regulations.

These proposed regulations eliminate many existing provisions of Part 102 either because they are duplicative or because they set forth in regulation provisions which are better governed by

internal Agency guidance. For example, the proposed regulations do not detail the recordkeeping obligations of the Privacy Act Officer. This does not mean, of course, that SBA will not comply with the recordkeeping requirements of the Privacy Act. It simply indicates that it will be an Agency decision, not subject to the provisions of the Administrative Procedures Act, as to which of its employees discharges which of the recordkeeping responsibilities.

The elimination of an existing provision is not—except as noted above—meant to change substantive procedures. For example, the proposed regulations would eliminate those provisions of present § 102.3 which set forth what documents the SBA would routinely make available and what documents the SBA routinely withholds. This does not signal a change in SBA policy on withholding. SBA will continue to provide all required documents, along with such additional documents as it considers appropriate, but SBA sees no reason to give this unexceptional policy the weight of regulation.

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 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 proposed regulation would merely make the Agency's FOIA and PA procedures clearer. It will institute governmental efficiencies at no cost to small businesses. 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 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 102

Freedom of information, Privacy.

13 CFR Part 137

Classified information.

For the reasons set forth above, SBA hereby proposes to amend Title 13 of the Code of Federal Regulations, as follows:

1. Part 102 would be revised to read as follows:

PART 102—RECORD DISCLOSURE AND PRIVACY**Subpart A—Disclosure of Information**

Sec.

- 102.1 Purpose.
 102.2 How can I get records from SBA?
 102.3 How long will it take for SBA to respond to my request for records?
 102.4 How will SBA respond to my request?
 102.5 If SBA grants my request, which records will be supplied?
 102.6 How will SBA respond to requests for business information?
 102.7 Procedures for submitters of business information to SBA after January 1, 1996.
 102.8 What fees will SBA charge?
 102.9 How may I appeal a denial of my request for information or a fee determination?
 102.10 How can I get the Public Index of SBA materials?
 102.11 What happens if I ask SBA for a record that another Federal Agency generated?
 102.12 What happens if I ask for classified records?
 102.13 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding, or administrative proceeding?

Subpart B—The Privacy Act

- 102.20 What privacy rights does this subpart regulate?
 102.21 How will SBA maintain records?
 102.22 When will SBA disclose records?
 102.23 Special rules about personnel and equal employment opportunity files.
 102.24 What is a record?
 102.25 What is a system of records?
 102.26 What does this subpart mean by "person to whom a record pertains" or "you"?
 102.27 What records are partially exempt from the provisions of the Privacy Act?
 102.28 Information compiled for civil action.
 102.29 Who administers SBA's responsibilities under the Privacy Act?
 102.30 How can I write to the Privacy Act Officer?
 102.31 Who appoints Systems Managers?
 102.32 What do Systems Managers do?
 102.33 How can I write to a Systems Manager?
 102.34 How can I see records kept on me?
 102.35 How long will it take SBA to respond to my request?

- 102.36 How will SBA respond to my request?
 102.37 How may I appeal a decision to deny me access to my records?
 102.38 To whom should my appeal be addressed?
 102.39 When must I appeal to the Privacy Act Officer?
 102.40 When will SBA respond to my appeal?
 102.41 How will SBA respond to my appeal?
 102.42 How can I get SBA to amend a record kept on me?
 102.43 What should my petition say?
 102.44 For what reasons will SBA amend my record?
 102.45 Will SBA ask me for more information after I make my request?
 102.46 When will SBA respond to my request?
 102.47 How will SBA respond to my request?
 102.48 How do I appeal a refusal to amend a record kept on me?
 102.49 To whom should I address my appeal?
 102.50 By when must I submit my appeal?
 102.51 By what standards will the Privacy Officer review my appeal?
 102.52 When will SBA respond to my appeal?
 102.53 How will SBA respond to my appeal?
 102.54 How can I obtain judicial review about an SBA Privacy Act decision?
 102.55 What must SBA tell the individuals from whom it collects information?
 102.56 Will SBA sell my name or address?
 102.57 Do I have to give SBA my Social Security Number?
 102.58 When will SBA show personnel records to my representative?
 102.59 What fees will SBA charge me for my records?
 102.60 May I be informed of disclosures made of my record?
 102.61 Matching Program procedures.

Authority: 5 U.S.C. 552; 44 U.S.C. *et seq.*; 5 U.S.C. 552a; 18 U.S.C. 4203 (a)(1); 31 U.S.C. 1 *et seq.*; 31 U.S.C. 67 *et seq.*; E.O. 12600, 3 CFR 1987 Comp. p. 235.

PART 102—RECORD DISCLOSURE AND PRIVACY**Subpart A—Disclosure of Information****§ 102.1 Purpose.**

This subpart describes the procedures by which the Small Business Administration makes documents available under the Freedom of Information Act (5 U.S.C. 552).

§ 102.2 How can I get records from SBA?

- (a) You can go to the SBA office at which the records are kept, and photocopy any final SBA decision, policy statement, or standard operating procedure.
 (b) For copies of all other records, you must send a letter request to the SBA office at which the records are kept. The letter must describe specific records you

want. If you don't know which SBA office keeps the records, you may send your letter to the nearest SBA District Office. You may also send your letter to the Chief, Freedom of Information Act and Privacy Act, 409 Third Street SW., Suite 5900, Washington D.C. 20416. The office receiving your letter will forward it to the correct office.

§ 102.3 How long will it take for SBA to respond to my request for records?

(a) If you have met the fee requirements of § 102.8, SBA will respond within ten working days after the correct office receives your request, except under unusual circumstances. Unusual circumstances include especially large numbers of records requested, records not located in the office handling the request, or the need to consult with more than one interested government office. If you make your request on behalf of another person, SBA will respond within ten working days after you present a document signed by that person authorizing you to request information on his behalf. If you make your request on behalf of another person without including such signed authorization, SBA will inform you of the requirements of this paragraph.

(b) If you send your request to the wrong office, that office will send it to the correct office within ten working days and will send you an acknowledgement letter.

(c) If SBA determines that it will be unusually difficult to comply with your request within ten working days, SBA will respond within twenty working days of the date upon which the correct office receives your request, and will notify you that the extra time is required.

§ 102.4 How will SBA respond to my request?

Within the time limit described in § 102.3, SBA will either:

- (a) Give you the records you requested,
 (b) Give you some or none of the records you requested, explain why SBA has decided not to comply fully with your request, citing specific exemptions where applicable, and explain how to appeal that decision, or
 (c) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable.

§ 102.5 If SBA grants my request, which records will be supplied?

SBA will give you copies of all records or portions of records requested which are in the processing office as of the close of the day upon which that office received your request.

§ 102.6 How will SBA respond to requests for business information?

(a) *What is business information?* Business information is a trade secret, or commercial or financial information, contained in records provided to the SBA by any person and which may be protected from disclosure under Exemption Four of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

(b) *Who is the submitter of business information?* The submitter is the business entity to which the business information pertains and which submitted the information to SBA, either directly or through an intermediary such as a bank, SBIC licensee, or representative.

(c) *What if the business information has previously been released to the general public?* SBA will disclose such business information upon request and payment of any required fees.

(d) *What if the business information has not previously been released to the general public?* Except as provided in paragraph (e) of this section:

(1) *For all business information submitted prior to January 1, 1996:*

(i) Unless SBA intends to deny the request to disclose business information entirely, SBA will notify the submitter of the request upon receipt, and will describe or provide the submitter with a copy of the records it intends to disclose.

(ii) SBA will ask the submitter to identify business information which would likely cause substantial competitive harm if disclosed and why the harm would occur. The submitter will have 5 working days to provide its response.

(2) *For all business information submitted after January 1, 1996:*

(i) Upon receipt of the request, SBA will notify the submitter when it intends to release business information which previously has been identified by the submitter as confidential and likely to cause substantial competitive harm if disclosed. If other business information is requested which SBA believes may cause substantial competitive harm if disclosed, SBA will notify the submitter of that request as well.

(ii) SBA will ask the submitter to explain why the identified information would be likely to cause substantial competitive harm if disclosed. The submitter will have 5 working days to provide its response.

(3) SBA will carefully consider the submitter's objections to disclosure, if any, but will not be bound by it. If a submitter objects to the disclosure of information which SBA believes it must disclose, SBA will disclose that information.

(4) If SBA decides to disclose information which the submitter requested be withheld, SBA will give the submitter the maximum notice possible before disclosure without violating the time constraints imposed by the Freedom of Information Act. In this notice, SBA will tell the submitter what it intends to disclose, and when it intends to make disclosure.

(e) If SBA does not intend to release any business information it will not notify the submitter of the request.

(f) SBA will promptly notify the submitter of any suit filed against SBA to compel disclosure.

§ 102.7 Procedures for submitters of business information to SBA after January 1, 1996.

(a) Submitters may mark or identify business information at the time of submission which would likely cause them substantial competitive harm if disclosed.

(b) After ten years from submission SBA will regard the previous assertion as no longer in effect unless the submitter has renewed its assertion in writing that disclosure would likely cause substantial competitive harm.

§ 102.8 What fees will SBA charge?

(a) *Basic fees.* (1) *For manual record search.* SBA will charge \$18 per hour.

(2) *For computer record searches.* SBA will charge the actual costs.

(3) *For review and disclosure determinations.* SBA will charge \$18 per hour.

(4) *Duplication.* SBA will charge ten cents per page for photocopy duplication, and the actual cost of reproduction for other methods.

(5) *Certifying records.* SBA will charge actual costs.

(6) *For requested special types of delivery other than first-class mail.* SBA may charge the actual cost.

(b) *If you are a representative of an educational institution, a non-commercial scientific institution, or a member of the news media.* SBA will charge you only for the cost of duplication after the first 100 pages.

(1) *What is an educational institution?* A state-certified preschool, elementary or secondary school, an accredited college or university, an accredited institution of professional education, or any accredited or state-certified institute of vocational education which operates a program or programs of scholarly research.

(2) *What is a non-commercial scientific institution?* An organization which is operated solely for the purpose of conducting scientific research, the results of which are not intended to

promote any particular product or industry.

(3) *What is a representative of an educational or non-commercial scientific institution?* A requester seeking records on behalf of that institution who is authorized by that institution to do so, and who is seeking those records for scholarly or scientific reasons, as long as there is no commercial purpose to the request for records.

(4) *What is a representative of the news media?* An individual who is actively gathering news for an entity that is organized and operated to disseminate information to the general public. To be considered "news media", this organization may provide information by subscription and may target its dissemination to a narrow section of the general public as long as any member of the general public may purchase information from it. If you are not employed by the news media, but have a reasonable expectation that you will sell the information you obtain to the news media, SBA may conclude that you are a representative of the news media. SBA will not consider you to be a representative of the news media if your request has a commercial purpose, beyond the commercial purpose of selling information to the general public.

(c) *Member of the general public.* If you are a member of the general public, SBA will not charge you for the first two hours of search time, the first hundred pages of photocopy duplication, or for review and disclosure determinations. The general public is anyone who is not a representative of an educational institution, a representative of the news media, or a commercial requester.

(d) *Commercial requester.* If you are a commercial requester you must pay all the basic fees set forth in paragraph (a) of this section. A commercial requester is anyone seeking information for commercial, trade, or profit interests of the requester or someone he or she is trying to help.

(e) *How does SBA determine what category of requester I am?* The SBA office processing your request will determine the appropriate category. If you are not a commercial requester, you must show us what category of requester you are.

(f) *Tell us how much you are willing to pay.* To get the quickest possible response, you must tell SBA how much money you are willing to pay in fees when you make your request for records.

(g) If you don't tell us how much you are willing to pay and SBA estimates that the fee will exceed \$25.00, SBA

will estimate the fee and will not process your request until you tell SBA that you are willing to pay the estimated amount, or until you narrow the request so that the fee is less than \$25.

(h) SBA will waive fees less than \$25.

(i) *If the fee is more than \$250, or if you have a history of failing to pay FOIA fees in a timely manner*, SBA will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *Who determines the fee?* The SBA office which processes your request.

(k) *When do you pay the fee?* You will be billed when SBA responds to your request and you must pay within thirty-one calendar days.

(l) *Failure to pay fees.* (1) After the thirty-first day following the date upon which you were billed, SBA will charge interest at the maximum rate allowed under Title 31 of the United States Code, section 3717.

(2) If you owe fees for previous FOIA responses, SBA will not respond to further requests unless you satisfy the amount due.

(3) If you do not pay the amount due within ninety calendar days of the date you must pay, SBA may notify consumer credit reporting agents of your delinquency.

(m) *Unsuccessful searches.* If SBA's search for records is unsuccessful, it will still bill you for the search.

(n) *Multiple requests.* If you make multiple requests at the same time, or at roughly the same time, SBA will aggregate your requests for records. In no case will SBA give you more than the first two hours of search time, or more than the first one hundred pages of duplication without charge.

(o) *Reduction of fees in the public interest.* If SBA determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information in your own commercial interests, SBA may waive or reduce the fee.

§ 102.9 How may I appeal a denial of my request for information or a fee determination?

(a) You must write to the Chief, Freedom of Information Act and Privacy Act Office at 409 Third Street SW., Suite 5900, Washington, D.C. 20416.

(b) The Chief must receive your written appeal within 45 calendar days of the date of the SBA fee determination from which you are appealing.

(c)(1) If you are appealing a denial of your request for information, the appeal must contain the following information:

(i) What records were denied.

(ii) The name and title of the individual responsible for denying the request and the address of his or her office.

(iii) Any other information you deem appropriate.

(2) If you are appealing a fee determination, the appeal must contain the following information:

(i) The address of the office which made the fee determination from which you are appealing.

(ii) The fee that office charged.

(iii) The fee, if any, you believe should have been charged.

(iv) The reasons you believe that your fee should be lower than the fee which the Agency charged.

(v) Any other information you deem appropriate.

(d) If anybody other than the Chief was the person who originally made the determination you are appealing, the Chief will decide your appeal. If the Chief was the person who originally made the determination you are appealing, SBA's Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) SBA will take no more than twenty working days from the date upon which it receives your appeal to decide it, unless unusual circumstances require a thirty working days response time.

(f)(1) If you are appealing a decision to deny your request for records, SBA will in response either:

(i) Give you the records you requested, or

(ii) Decline to give you the records you requested, tell you why SBA has concluded that the records were exempt from disclosure under the Freedom of Information Act, and tell you how to obtain judicial review of SBA's decision.

(2) If you are appealing a fee determination, SBA will in response either charge the fee you request or charge another fee and explain why SBA has concluded that the fee it has decided to charge is appropriate.

§ 102.10 How can I get the Public Index of SBA materials?

(a) The Public Index is a document which provides identifying information about official documents which SBA has issued.

(b) SBA has administratively determined, as permitted by the Freedom of Information Act, that periodic publication and distribution is unnecessary and impracticable.

(c) The Public Index is set forth in Appendix 3 of SBA Standard Operating Procedure 40 03. You can review and photocopy the Public Index, along with

Standard Operating Procedure 40 03, at any SBA office.

§ 102.11 What happens if I ask SBA for a record that another Federal Agency generated?

Such a request is a request directed to the wrong office, as that term is used in § 102.3(b). SBA will forward your request to the generating Agency.

§ 102.12 What happens if I ask for classified records?

SBA does not have original classification authority. Therefore, any national security information or materials (as defined by Executive Order 12356) in SBA's possession must have been classified by another agency. If you ask for such material, SBA will forward that request to the agency which originally classified those materials, with its recommendations, if any.

§ 102.13 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding?

(a) If your subpoena requires either the testimony of an SBA employee or records within SBA's possession, the person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will in turn obtain approval from the Associate General Counsel for Litigation. The Associate General Counsel may delegate the authorization for production of documents or testimony as appropriate to local SBA counsel.

(b) If SBA counsel approves of compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves of compliance with the subpoena, SBA will not comply, and will base such noncompliance on an appropriate legal basis such as privilege or a statute.

(d) A copy of a subpoena relating to a criminal matter should be provided by SBA counsel to SBA's Inspector General.

Subpart B—The Privacy Act

§ 102.20 What privacy rights does this subpart regulate?

This subpart establishes SBA's policy and procedures safeguarding an individual against an invasion of personal privacy.

(a) Except as otherwise provided by law or regulation, SBA will permit you to do the following:

(1) Determine what records pertaining to you are collected, maintained, used, or disseminated by the SBA;

(2) Object when records pertaining to you are obtained by SBA for a particular

purpose and are proposed to be used or made available for another purpose without your consent; and

(3) Gain access to information pertaining to you in records, have a copy made of all or any portion of those records, and correct or amend such records as appropriate;

(b) SBA will collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(c) SBA will permit exemptions from the requirements of 5 U.S.C. 552a (Privacy Act of 1974) only where an important public policy need for such exemption has been determined by specific statutory authority.

§ 102.21 How will SBA maintain records?

SBA records will:

(a) Contain only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute, regulation, or by Executive Order of the President.

(b) Be comprised, to the maximum practical extent, of an individual's own statements when the information may result in an adverse determination about an individual's rights, benefits, or privileges under a Federal program.

§ 102.22 When will SBA disclose records?

SBA will not disclose to anyone any record which is contained in a system of records, except that it will disclose a record:

(a) To the person about whom the record is maintained, or to that person's agent, within the limits discussed in this subpart.

(b) To those employees of the Agency who have a need for the record to perform their duties;

(c) When required under 5 U.S.C. 552 (Freedom of Information Act);

(d) For a routine use of the record compatible with the purpose for which it was collected;

(e) To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity pursuant to Title 13, United States Code;

(f) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, where the record is transferred in a form that is not individually identifiable;

(g) To the National Archives of the United States as a record which has

sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;

(h) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(1) The activity is authorized by law, and

(2) The head of the agency or instrumentality has made a written request to the Privacy Act Officer specifying the particular portion desired and the law enforcement activity for which the record is sought;

(i) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual. Upon disclosure notification will be transmitted to the last known address of such individual;

(j) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(k) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(l) Pursuant to the order of a court of competent jurisdiction; or

(m) To a consumer reporting agency in accordance with section 3711(f) of title 31.

§ 102.23 Special rules about personnel and equal employment opportunity files.

(a) All SBA files which the Office of Personnel Management determines are personnel files will be governed by the provisions of parts 293 and 297 of Title 5 of the Code of Federal Regulations.

(b) All Equal Employment Opportunity complaint files will be governed by the provisions of part 1611 of Title 29 of the Code of Federal Regulations.

§ 102.24 What is a record?

A record is information which SBA maintains on an individual and which includes either his name or some other symbol (such as a fingerprint, a social security number, or a photograph) by which he or she can be identified.

§ 102.25 What is a system of records?

A system of records is one or more records which SBA routinely keeps for official purposes, and from which SBA can retrieve records by using a name or personal identifier.

§ 102.26 What does this subpart mean by "person to whom a record pertains" or "you"?

When this subpart refers to the "person to whom a record pertains" or uses the pronoun "you", it refers to a United States citizen or a lawfully admitted alien. It does not refer to a corporation, partnership, or sole proprietorship.

§ 102.27 What records are partially exempt from the provisions of the Privacy Act?

(a) The following systems of records are exempt from certain provisions of the Privacy Act: Audit Reports (system of records #SBA 015), Litigation and Claims Files (#SBA 070), Personnel Security Files (#SBA 100), Security and Investigations Files (#SBA 120), Office of Inspector General Referrals (#SBA 125), Investigations Division Management Information System (#SBA 130), and Standards of Conduct Files (#SBA 140).

(b) The provisions of the Privacy Act from which these systems of records are exempt are subsections

(c)(3)(Accounting of Certain Disclosures), (d)(Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f)(Agency Rules) of the Privacy Act.

(c) The systems of records described in paragraph (a) are exempt from the provisions of the Privacy Act described in paragraph (b) in order to:

(1) Prevent the subject of investigations from frustrating the investigatory process;

(2) Protect investigatory material compiled for law enforcement purposes;

(3) Fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information; or

(4) Prevent interference with law enforcement proceedings.

(d) In addition to the foregoing exemptions, the systems of records described in paragraph (a) of this section which are numbered as numbers SBA 015, 100, 120, 125 and 130 are fully exempt from the Privacy Act to the extent that they contain:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports associated with an identifiable individual compiled at any stage of the process of enforcement of

the criminal laws from arrest or indictment through release from supervision.

(e) The systems of records described in paragraph (d) are fully exempt from the Privacy Act to the extent described in that paragraph because they are records maintained by the Investigations Division of the Inspector General, which is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2). They are exempt in order to:

- (1) Prevent the subjects of OIG investigations from using the Privacy Act to frustrate the investigative process;
- (2) Protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I;
- (3) Protect the confidentiality of other sources of information;
- (4) Avoid endangering confidential sources and law enforcement personnel;
- (5) Prevent interference with law enforcement proceedings;
- (6) Assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems;
- (7) Prevent the disclosure of investigative techniques; or
- (8) Prevent the disclosure of classified information.

§ 102.28 Information compiled for civil action.

Nothing in the regulations in the subpart allows an individual access to any information compiled by the Agency in reasonable anticipation of a civil action or proceeding. In the event that there should be a question as to whether information should be disclosed pursuant to this section, the Systems Manager for the System of Records involved will obtain an opinion from Agency counsel, and will also consult with the Privacy Act Officer.

§ 102.29 Who administers SBA's responsibilities under the Privacy Act?

The Privacy Act Officer has overall responsibility for administering the Privacy Act for SBA, and the Systems Manager is responsible for administering the Privacy Act as to systems of records within an SBA Office.

§ 102.30 How can I write to the Privacy Act Officer?

You can write to the Privacy Act Officer at 409 Third Street S.W., Suite 5900, Washington, D.C. 20416.

§ 102.31 Who appoints Systems Managers?

The Senior official in each field office and each Headquarters program area designates himself or herself or appoints another as the Systems Manager for that office.

§ 102.32 What do Systems Managers do?

Systems Managers have the following responsibilities, among others, for the offices for which they are appointed:

- (a) Acting as the initial contact person to individuals seeking access or amendment of their records.
- (b) Responding to requests for information.
- (c) Discussing the availability of records with individuals.
- (d) Amending records in cases where amended information is not controversial and does not involve policy decision making.
- (e) Informing individuals of any reproduction fees to be charged.
- (f) Assuring that their systems of records contains no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity. First Amendment rights include, but are not limited to, freedom to follow religious and political beliefs, freedom of speech and of the press, and freedom of assembly and the right to petition government.

§ 102.33 How can I write to a Systems Manager?

You can write to a Systems Manager by writing to the SBA Office which maintains the record you are seeking. If you do not know which office that is, or you do not know the address of that office, you can write to the Privacy Act Officer at 409 3rd Street S.W., Suite 5900, Washington, D.C. 20416, who will forward your request to the proper Systems Manager.

§ 102.34 How can I see records kept on me?

- (a) You may look at any information pertaining to yourself if it is contained in any SBA system of records, unless some law or regulation prohibits it.
- (b) In order to see this information, you must ask for it in writing and the writing must identify what records you want. The writing should be addressed to the Systems Manager overseeing the system of records.
- (c) The Systems Manager (or, when appropriate, the Privacy Act Officer) may ask for more specific information

about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person about whom the information pertains.

§ 102.35 How long will it take SBA to respond to my request?

The Systems Manager will respond within ten working days.

§ 102.36 How will SBA respond to my request?

The Systems Manager will inform you that:

- (a) Your request is denied, in which case he or she will set forth the reasons for denial and your rights to appeal; or
- (b) Your request is granted and you may view your record, in which case he or she will set forth the time and date for you to review your record in the presence of an SBA employee; or
- (c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.37 How may I appeal a decision to deny me access to my records?

Your appeal should be in writing and should set forth any information you think would show that you should have access to your records.

§ 102.38 To whom should my appeal be addressed?

- (a) *Denial of a personnel file.* Address an appeal of a denial of a request for a personnel file to the Office of Personnel Management, 1900 E Street N.W., Washington, D.C. 20006.
- (b) *Denial of an Equal Employment Opportunity Complaint File.* Address an appeal of a denial of an Equal Employment Opportunity Complaint File to the Equal Employment Opportunity Commission, 1801 L Street N.W., Washington, D.C. 20036.

(c) *All other appeals.* You may appeal to the Privacy Act Officer a decision to deny you access to any other record. See § 102.30, above.

§ 102.39 When must I appeal to the Privacy Act Officer?

Your appeal must reach the Privacy Act Officer on or before 30 calendar days after the date the denial was issued. If your appeal is based on the failure of the Systems Manager to

answer your request, your appeal must reach the Privacy Act Officer on or before 90 calendar days after the date by which the Systems Manager should have responded under section 102.35.

§ 102.40 When will SBA respond to my appeal?

The Privacy Act Officer will respond to you within 30 working days of the date when your appeal was received.

§ 102.41 How will SBA respond to my appeal?

The Privacy Act Officer will inform you that:

(a) Your request is denied, in which case the reasons for denial will be set forth along with your rights to judicial review of SBA's decision; or

(b) Your request is granted and you may view your record, in which case the time and date for you to review your records in the presence of an SBA employee will be set forth; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.42 How can I get SBA to amend a record kept on me?

You can petition to have records kept on you amended by writing to the Systems Manager who oversees the system of records in which the record you wish amended is kept. If you are unable to determine who that Systems Manager is, you may send your petition to the Privacy Act Officer, who will forward it to the right Systems Manager. See § 102.30.

§ 102.43 What should my petition say?

Your petition should include the following:

(a) In what system of records the record you want amended is kept.

(b) What record you want amended.

(c) What specific information in that record you want amended.

(d) Why you want the record amended.

(e) Any information you have, including copies of evidence, which you think will persuade the Systems Manager to amend the record.

(f) What the record should say.

§ 102.44 For what reasons will SBA amend my record?

SBA will maintain only accurate, complete, and up-to-date records which are relevant to accomplish some purpose of the Agency required by law, regulation, or Executive Order of the President. There are four grounds for amending a record. They are:

(a) The record is not accurate.

(b) The record is not relevant to any legitimate SBA concern.

(c) The record is out-of-date. For example, there may have been events since the date of the record which have affected some of the information contained in the record.

(d) The record is incomplete. There may be relevant information about the material contained in the record which was not included in the record.

§ 102.45 Will SBA ask me for more information after I make my request?

The Systems Manager (or, when appropriate, the Privacy Act Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number, but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person about whom the information pertains.

§ 102.46 When will SBA respond to my request?

The Systems Manager will acknowledge receipt of your request within 10 working days and issue a written response within 30 working days.

§ 102.47 How will SBA respond to my request?

The Systems Manager will:

(a) Make the amendment you request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record, but not in complete accordance with your request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record and will, in addition, tell you why your request was not granted in full and tell you of your appeal rights; or

(c) Decline to amend the record, in which case he or she will tell you why your request was not granted and tell you of your appeal rights.

§ 102.48 How do I appeal a refusal to amend a record kept on me?

Your appeal should be in writing and include the following:

(a) All of the information contained in your original request to amend the record.

(b) The response of the Systems Manager, if any, including the reasons for denying your request, if any.

(c) Any information you wish to submit in response to the Systems Manager's findings.

§ 102.49 To whom should I address my appeal?

(a) *Personnel file.* Address your appeal to the Office of Personnel Management, 1900 E Street NW., Washington, DC 20006.

(b) *Equal Employment Opportunity Complaint File.* Address your appeal to the Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20036.

(c) *All other appeals.* Address your appeal to the Privacy Act Officer. See § 102.30.

§ 102.50 By when must I submit my appeal?

Your appeal must be received by the Privacy Act Officer within 30 calendar days of the date upon which the Systems Manager declined to amend your records, or within 90 calendar days of the date upon which the Systems Manager should have responded to your request under § 102.46 if the Systems Manager did not so respond.

§ 102.51 By what standards will the Privacy Officer review my appeal?

The Privacy Act Officer will decide your appeal using the criteria of accuracy, relevance, timeliness, and completeness described in § 102.44. The Privacy Act Officer will review all relevant information and may seek the views of other SBA personnel. The Privacy Act Officer may review information not available to or not used by the Systems Manager.

§ 102.52 When will SBA respond to my appeal?

The Privacy Act Officer will respond to your appeal within 30 working days of the date upon which it is received, unless the Administrator determines that unusual circumstances exist, in which case the Privacy Act Officer will notify you of the presence of these unusual circumstances within 30 working days of the date upon which he or she received your appeal, and will respond to your appeal within 60 working days of the date of receipt.

§ 102.53 How will SBA respond to my appeal?

The Privacy Act Officer will:

(a) Make the amendment you request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record, but not in complete accordance with your request, in which case he or she will

(1) Send all individuals who had previously received a copy of that record a copy of the amended record, and

(2) Tell you why your request was not granted in full and tell you of your rights to judicial review, and

(3) Mark the areas of dispute, include your statement of disagreement in the file, and, if appropriate, include a concise statement of why the Agency refused to amend the record in accordance with your request, and send this material to all individuals who had previously received a copy of that record; or

(c) Decline to amend the record in any respect, in which case he or she will

(1) Tell you why your request was not granted and tell you of your rights to judicial review, and

(2) Mark the areas of dispute, include your statement of disagreement in the file, and, if appropriate, include a concise statement of why the Agency refused to amend the record in accordance with your request, and send this material to all individuals who had previously received a copy of that record.

§ 102.54 How can I obtain judicial review about an SBA Privacy Act decision?

You may bring a civil action against SBA in a district court of the United States whenever the SBA:

(a) Makes a final determination not to provide you with access to or to amend your record in accordance with your request;

(b) Fails to maintain your records with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to you that may be made on the basis of such record, and consequently a determination is made which harms you, or

(c) Fails to comply with any other provisions of the Privacy Act (5 U.S.C. 552a) or the implementing regulations in this subpart, in such a way as to cause harm to you.

§ 102.55 What must SBA tell the individuals from whom it collects information?

When SBA collects information from an individual, it must, either on the form which collects the information or on a separate form which the individual may keep, state:

(a) Whether disclosure of the information is voluntary or mandatory;

(b) By what authority SBA is collecting the information;

(c) For what principal purpose or purposes SBA is collecting the information;

(d) What routine uses might be made of that information; and

(e) What will happen if the information isn't supplied.

§ 102.56 Will SBA sell my name or address?

SBA will not sell your name or address to anyone. Someone might acquire it, though, under the Freedom of Information Act (5 U.S.C. 552).

§ 102.57 Do I have to give SBA my Social Security Number?

(a) *No.* You need not give SBA your Social Security Number, even if SBA asks for it.

(b) If SBA asks you for your Social Security Number, it must also tell you under what authority it is seeking to know your Social Security Number, and for what purpose.

(c) SBA cannot withhold a benefit solely because you refuse to tell it your Social Security Number.

§ 102.58 When will SBA show personnel records to a representative?

(a) If you go to where the records are kept, SBA will permit one person of your choosing to inspect the records with you.

(b) If you want your representative to inspect the records without you, you must give SBA a written authorization.

(c) SBA will mail a copy of the record to your representative if you direct SBA to do so in writing.

(d) You may inspect the records of a minor if you present evidence that you are the custodial parent (including joint custodial parent) or legal guardian of that minor. An affidavit or declaration, signed by you under penalty of perjury, is normally sufficient evidence unless SBA has information to the contrary.

(e) You may inspect the records of an adult incompetent if you present evidence that you are the legal guardian of that person. A guardianship order is sufficient evidence of your guardianship. Other evidence may be considered.

§ 102.59 What fees will SBA charge me for my records?

SBA will charge you only for photocopying at the rate of ten cents per page. SBA will not charge you for finding or reviewing your records. Fees less than \$25 will be waived.

§ 102.60 May I be informed of disclosures made of my records?

SBA will tell you what disclosures it made of your records if you ask us,

except that SBA will not tell you about disclosures it made to another federal agency or government entity for law enforcement purposes.

§ 102.61 Matching Program procedures.

(a) SBA will comply with the Computer Matching and Privacy Protection Act of 1988. (Public Law 100-503, as amended). This Act establishes procedures federal agencies must use if they want to match their computer lists.

(b) If SBA adopts any procedures to supplement its compliance with the Computer Matching and Privacy Protection Act of 1988 which are not mandated in that Act, SBA will publish those procedures in Standard Operating Procedure (SOP) 40 04. You can get a copy of SOP 40 04 at any SBA Office.

(c) If SBA enters into an agreement with any Federal agency, contractor of any Federal Agency, State or Local Government, or agency of any State or Local Government to disclose records for purposes of a computer matching program, SBA will make a copy of that agreement available to the general public. You can get a copy of all such agreements by writing to the Privacy Act Officer.

PART 137—[REMOVED]

2. Part 137 is removed.

Dated: November 13, 1995.

Philip Lader,
Administrator.

[FR Doc. 95-28446 Filed 11-22-95; 8:45 am]

BILLING CODE 8025-01-P

13 CFR Part 103

Policies of General Application

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to streamline its regulations by eliminating many rules and simplifying and improving those that remain. This proposed rule would reorganize and streamline the entire Part 103, which covers the standards one must meet to conduct business with SBA. It makes the standards clearer and more understandable to those who are regulated, and easier for SBA to enforce.

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