

(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.

ADDRESSES: Written comments may be sent to David Kohler, Regulatory Reform Team Leader (103), Small Business Administration, 409 3rd Street SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael Dowd, Director, Office of Loan Programs, at (202) 205-6490.

SUPPLEMENTARY INFORMATION: 13 CFR Part 103 contains SBA's policies governing the standards for suspending or revoking the privileges of persons who conduct business with SBA on behalf of applicants or lenders. This proposed rule reorganizes and streamlines Part 103, making it easier to understand and enforce. It changes the title of the Part to "Standards for Conducting Business with SBA" to describe more clearly the scope of the regulations. The sections stating the statutory provisions underlying the Part and its purpose—103.13 and 103.13-1—are eliminated as unnecessary. The proposed rule renumbers the sections that remain: present §§ 103.13-2 through 103.13-6 would become §§ 103.1-103.5. The proposed rule clarifies the existing definitions of agents who appear before SBA on behalf of applicants for assistance, adds definitions for "packagers" and "lender service providers," and provides that these two categories of agents are specifically covered by SBA's requirements governing conduct of business. It also amends, in certain respects, and adds greater specificity to the definition of "good cause" for which the Administrator may revoke or suspend the privilege for conducting business with SBA. It adds provisions prescribing the use and form of lender service provider agreements which must contain certain provisions regarding services to be provided and compensation, including a prohibition on secondary market premium sharing. In addition to these substantive changes, the proposed rule is written in clearer, more straightforward language than the present Part.

It is SBA's intention to require all packagers, lender service providers, and agents to register with SBA for purposes of keeping track of who is performing such activities on behalf of applicants for assistance or lenders. SBA also intends to develop a code of ethical and professional responsibility based upon the substance of the proposed regulations which it will enforce with respect to all agents. Finally, SBA will provide training for anyone or any entity that wishes to represent applicants for SBA assistance or provide services to lenders. The development of these initiatives will take place over the

next fiscal year, in consultation with representatives of the affected industries. To the extent that they require modifications of these proposed regulations, such modifications will ensue in later rulemakings.

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 involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq. 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 in 13 CFR Part 103

Standards for conducting business with SBA, procedures for suspension or revocation of privileges, compensation allowed to agents.

Accordingly, pursuant to the authority set forth in sections 5 and 13 of the Small Business Act, 15 U.S.C. §§ 634 and 642, SBA hereby proposes to revise part 103 of Title 13, Code of Federal Regulations (CFR), as follows:

Part 103 would be revised to read as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

- 103.1 Key Definitions.
- 103.2 Who may conduct business with SBA?
- 103.3 May SBA suspend or revoke an agent's privilege?
- 103.4 What is "good cause" for suspension or revocation?
- 103.5 How does SBA regulate an agent's fees and provision of service?

Authority: Secs. 5, 13, 72 Stat. 385, 394 (15 U.S.C. 634, 642).

§ 103.1 Key Definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, manufacturer's representative, packager, lender service provider or any other person representing an applicant or participant.

(b) The term *conduct business with SBA* means:

(1) preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

(2) preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf; and

(4) such other activity as SBA reasonably shall determine.

(c) *Applicant* means any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying for any type of assistance from SBA.

(d) *Lender Service Provider* means an agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a "lender service provider" on a loan-by-loan basis.

(e) *Packager* means an agent who is employed and compensated by an applicant or lender to prepare the applicant's application for financial assistance from SBA. SBA determines whether or not one is a "packager" on a loan-by-loan basis.

(f) *Participant* means an entity that is participating in any of the financial, investment, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

§ 103.2 Who may conduct business with SBA?

(a) If you are an applicant, a participant, a partner of an applicant or participant partnership, or serve as an officer of an applicant, participant corporation, or limited liability company, you may conduct business with SBA without a representative.

(b) If you are an agent, you may conduct business with SBA on behalf of an applicant, participant or lender, unless representation is otherwise prohibited by law or the regulations in

this or any other part of Title 13. For example, persons debarred under the SBA or Government-wide debarment regulations may not conduct business with SBA. SBA may request that any agent supply written evidence of his or her authority to act on behalf of an applicant, participant, or lender as a condition of revealing any information about the applicant's, participant's, or lender's current or prior dealings with SBA.

§ 103.3 May SBA suspend or revoke an agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any agent to conduct business with SBA. Part 134 of this chapter states the procedures for appealing the decision to suspend or revoke the privilege. The suspension or revocation remains in effect during the pendency of any administrative proceedings under Part 134 of this chapter.

§ 103.4 What is "good cause" for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business. This includes:

- (a) Attempting to influence any employee of SBA or a lender, by gifts, bribes or other unlawful or unethical activity, with respect to any matter involving SBA assistance.
- (b) Soliciting for the provision of services to an applicant by another entity when there is an undisclosed business relationship between the two parties.
- (c) Violating ethical guidelines which govern the profession or business of the agent or which are published at any time by SBA.
- (d) Implying or stating that the work to be performed for an applicant will include use of political or other special influence with SBA. Examples include indicating that the entity is affiliated with or paid, endorsed or employed by SBA, and advertising using the words *Small Business Administration* or *SBA* or its seal or symbol, and giving a "guaranty" to an applicant that the application will be approved.
- (e) Charging or proposing to charge any fee that does not bear a necessary and reasonable relationship to the services actually rendered or expenses actually incurred in connection with a matter before SBA or which is materially inconsistent with the provisions of an applicable compensation agreement or lender service provider agreement. A fee based solely on a percentage of a loan or

guarantee amount can be reasonable, depending on the circumstances of a case and the services actually rendered.

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including debarment, criminal conviction, or civil judgment within the last seven years for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, false claims, or obstruction of justice.

(g) Acting as both a lender service provider and a packager for an applicant on the same SBA business loan. A limited exception to this "two master" prohibition exists in the following circumstances:

(1) The lender service provider: is asked by the lender to perform packaging services on a loan, will be compensated solely by the lender, and provides a written disclosure to the applicant; or

(2) The packager: is first asked to package the loan by the lender, and is first asked to package the loan only after the lender has decided to make the loan and the terms of the loan have been established.

(h) Violating materially the terms of any compensation agreement or lender service provider agreement provided for in section 103.5.

(i) Violating or assisting in the violation of any SBA regulations, policies, or procedures of which the applicant has been made aware.

§ 103.5 How does SBA regulate an agent's fees and provision of service?

(a) Any applicant, agent, packager, or lender service provider must execute and provide to SBA a compensation agreement or lender service provider agreement governing the compensation charged for services rendered or to be rendered to the applicant or lender in any matter involving SBA assistance. SBA provides the form of compensation agreement and a suggested form of lender service provider agreement to be used by agents.

(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the agent, packager or lender service provider must: reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the applicant, and refrain from charging or collecting, directly or indirectly, from the applicant an amount in excess of the amount SBA deems reasonable.

(c) Each lender service provider must enter into a written agreement with each lender for whom it acts in that capacity.

SBA will review all such agreements. Such agreements need not contain each and every provision found in the SBA's suggested form of agreement. However, each agreement must indicate that both parties agree not to engage in any sharing of secondary market premiums, that the services to be provided are accurately described, and that the agreement is otherwise consistent with SBA requirements. Subject to the prohibition on splitting premiums, lenders have reasonable discretion in setting compensation for lender service providers. Such compensation will generally be considered reasonable unless:

- (1) The compensation is clearly excessive in light of industry standards and the services to be performed; and
- (2) The excess compensation is adversely affecting the loan terms provided to applicants.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95-28447 Filed 11-22-95; 8:45 am]

BILLING CODE 8025-01-P

13 CFR Part 121

Small Business Size Regulations

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 improve the Agency's size program by simplifying and clarifying language in the existing rules, conforming these rules to present SBA policies and practices, and providing some substantive modifications to streamline the delivery of services to the public. The revised regulations would be more understandable and much easier to use. The proposed rule would reduce the number of sections. It would make the definition of "affiliation" more concise. While no longer recognizing an absolute right to appeal size determinations, it would give the Office of Hearings and Appeals (OHA) discretionary authority to accept size appeals. The proposed rule would improve language, but would not change the existing size standards which apply to particular industries.

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