

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

■ 2. Section 611.340 is revised to read as follows:

§ 611.340 Confidentiality and security in voting.

(a) Each Farm Credit bank and association's board of directors must adopt policies and procedures that:

(1) Ensure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(2) Ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote.

(3) Provide for the establishment of a tellers committee or an independent third party who will be responsible for validating ballots and proxies and tabulating voting results. A tellers committee may only consist of voting stockholders who are not employees, directors, director-nominees, or members of that election cycle's nominating committee.

(4) Ensure that a list of eligible voting stockholders (or identity codes of eligible voting stockholders) as of the voting record date is provided to the tellers committee or independent third party that will be tabulating the vote to ensure the validity of the votes cast. A small number of specifically authorized administrative employees of the institution may assist the tellers committee in such verifications, provided the institution implements procedures to ensure the confidentiality and security of the information made available to the employees. If an

institution is using a tellers committee, verification of voter eligibility must be done separate and apart from the opening and tabulating of the actual ballots.

(5) Ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors, stockholders, or employees, or any other person except:

(i) A duly appointed tellers committee;

(ii) A small number of specifically authorized administrative employees assisting the tellers committee by validating stockholders' eligibility to vote;

(iii) An independent third party tabulating the vote; or

(iv) The Farm Credit Administration.

(b) No Farm Credit bank or association may use signed ballots in stockholder votes. A bank or association may use balloting procedures, such as an identity code, that can be used to identify whether an individual stockholder is eligible to vote or has previously submitted a vote. In weighted voting, the votes must be tabulated by an independent third party.

(c) An independent third party or each member of the tellers committee that tabulates the votes, and any administrative employees assisting the tellers committee in verifying stockholder eligibility to vote, must sign a certificate declaring that such party, member, or employee will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration, if requested.

(d) Once a Farm Credit bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting. A Farm Credit bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

(e) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. When stockholder meetings are held for the purpose of conducting elections or other votes, only proxy ballots may be accepted prior to any or all sessions of the stockholders' meeting

and mail ballots may only be distributed after the conclusion of the meeting. In an election of directors, ballots, proxy ballots, and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(f) An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or independent third party has validated the results of the vote.

Dated: October 10, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–24643 Filed 10–15–14; 8:45 am]

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SMALL BUSINESS ADMINISTRATION**2 CFR Part 2700****13 CFR Parts 103, 124 and 134**

RIN 3245–AG40

Agent Revocation and Suspension Procedures

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This rule proposes detailed procedures for the suspension and revocation of an Agent's privilege to do business with the United States Small Business Administration (SBA) within a single Part of the Code of Federal Regulations; remove 8(a) program specific procedures for Agent suspension and revocation; clarify existing and related regulations as to suspension, revocation, and debarment; and remove Office of Hearings and Appeals jurisdiction over Agent suspensions and revocations and government-wide debarment and suspension actions. This proposed rule would also conform SBA suspension and revocation procedures for Agents with general government-wide non-procurement suspension and debarment procedures.

DATES: Comments must be received on or December 15, 2014.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG40 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk

Management, 409 Third Street SW., 8th Floor, Washington, DC 20416.

SBA will post all comments to this proposed rule without change on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, you must submit such information to Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, 409 Third Street SW., 8th Floor, Washington, DC 20416 or send an email to debra.mayer@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, 202–205–7577, email: debra.mayer@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

Under Part 103 of Title 13 of the Code of Federal Regulations (CFR), SBA may, for good cause, suspend or revoke an Agent's privilege to conduct business with SBA. Part 103 applies to "Agents"—people/entities that represent applicants or participants in SBA programs, per 13 CFR 103(a). Some examples of Agents are attorneys, consultants, loan packagers, lender service providers, etc. Part 103 allows SBA to revoke an Agent's privilege to conduct business with SBA. In short, a Part 103 revocation is similar to a debarment, but limited to SBA instead of the entire federal government. Also, like debarment, Part 103 provides for suspension prior to revocation. However, aside from those similarities, revocation does not actually have any connections to debarment. It only excludes Agents from conducting business with SBA, not the rest of the federal government.

The current Part 103 regulations contain no procedures for suspension/revocation. Instead, SBA currently only has limited procedures regarding suspension and revocation, located in SBA's Standard Operating Procedure (SOP) 50 53 A and 13 CFR 124.4(c). These procedures apply only to a few types of Agents. SBA's Standard Operating Procedure (SOP) 50 53 A, Lender Supervision and Enforcement (June 2012) contains procedures only for the suspension and revocation of only certain Agents related to SBA loan programs. In addition, 13 CFR 124.4(c)

contains procedures only for the suspension and revocation of only certain Agents related to SBA's 8(a) Business Development Program. The proposed rule would fill this gap by establishing procedures for all Part 103 suspensions and revocations; not just those of certain programs.

SBA is modeling its Part 103 suspension and revocation procedures after the Title 2 suspension and debarment procedures because the Title 2 procedures are detailed and clear, have been in use for over 25 years, and contain the standard tenets of due process—notice, opportunity to object, notification of decision, and opportunity to request reconsideration. Agents would benefit from the efficiency and consistency of a single set of procedures for Part 103 suspension and revocation, which would replace SBA's current various procedures at Standard Operating Procedure (SOP) 50 53 A and 13 CFR 124.4(c), and this single set of procedures would apply to all Agents, as defined in 13 CFR Part 103(a).

In summary, this proposed rule would centralize within Part 103 the procedures for suspension and revocation for all Agents, without regard to the particular SBA program, and would utilize the same procedural elements found in current government-wide procedures and in SBA's current practices.

II. The Proposal

A. In General

The proposed rule would be an adaptation of government-wide suspension/debarment procedures set forth in 2 CFR Parts 180 and 2700, which SBA already utilizes in practice when conducting Part 103 suspensions and revocations.

The proposed rule would also eliminate a set of procedures in Part 124. These are revocation procedures that were established just for Agents dealing with the 8(a) Program. Now that SBA is establishing procedures affecting Agents in all SBA programs, this section in Part 124 would be redundant and duplicative if left in place.

In addition, this proposed rule would remove Office of Hearings and Appeals jurisdiction over Part 103 suspensions and revocations and Title 2 suspensions and debarments. SBA is currently the only federal agency whose administrative judges review nonprocurement suspension and debarment. OHA review is a deviation from the government-wide debarment regulations, in Title 2 at Part 2700. By eliminating OHA review, SBA actually

lessens its deviation from the government-wide debarment regulations. Another reason for SBA's decision to do this is that OHA does not review SBA's procurement debarments (debarments based in the Federal Acquisition Regulations), so eliminating OHA review of Title 2 debarments not only makes SBA consistent with the rest of the federal government, but also with SBA procedures for FAR debarments. Because revocation is so similar to debarment in function, SBA wishes to make the procedures for revocation consistent as well.

Finally, this proposed rule would make a number of clarifications in 13 CFR Part 103 and 2 CFR Part 2700.

B. Section-By-Section Analysis

Title 2, Sections 2700.765, 2700.890 and 2700.980. SBA is proposing to amend its nonprocurement suspension and debarment regulations at 2 CFR 2700.765 and 2700.890 to remove the Office of Hearings and Appeals' jurisdiction over nonprocurement suspension and debarment. SBA is currently the only government agency that provides for an appeal of nonprocurement suspension and debarment in an administrative court. Moreover, procurement suspensions and debarments under the Federal Acquisition Regulations do not provide for an appeal to an administrative court. SBA is therefore proposing this change in order to bring its own procedures into conformity with the rest of the government.

SBA is also proposing to add new section 2700.980 to supplement the definition of a "Participant" as used in the government-wide nonprocurement suspension and debarment regulations at 2 CFR § 180.980. Although it is SBA's position that all agents who conduct business with SBA are clearly included in the current definition of a "Participant," the proposed rule would add supplemental language to clarify that Agents, as defined in 13 CFR Part 103, are Participants for the purposes of the nonprocurement suspension and debarment regulations at 2 CFR Part 180.

Title 13, Sections 103.1 through 103.4. SBA is proposing a number of changes to existing language of these sections for the purpose of clarification.

Title 13, Section 103.1. In subsection (a), SBA would clarify that the list of agents in the definition for Agents is not all-inclusive and is proposing to add the term "loan agent" into the non-comprehensive list of various representatives who are considered Agents for the purpose of the regulation.

In subsections (b)(1) and (b)(2), SBA is proposing to add the word “assisting in the preparation of” in order to eliminate any possible ambiguity in the use of the word “preparing.” This addition would clarify that preparing an application for federal assistance includes any assistance in such preparation.

SBA is also proposing to add a new subsection (b)(3) and redesignate subsections (b)(3), (b)(4), and (b)(5) as (b)(4), (b)(5), and (b)(6), respectively. The proposed new subsection (b)(3) would specify that actions taken as a Referral Agent are included in the definition of the term “conduct business with SBA.”

In subsection (d), SBA is proposing to change the words “a specific” to “an” in order to prevent confusion as to whether there is a limiting factor regarding which documents the suspending official may examine. SBA knows of no such limitation.

In subsection (f), SBA is proposing to add the words, “such as a broker” in order to make clear that the term “Referral Agent” includes brokers.

In subsection (g), SBA is proposing to add the term “procurement” in order to make clear that a “Participant” as defined in this section includes persons or entities involved in all of SBA’s programs, including those related to government procurement.

Title 13, Section 103.2. SBA is proposing to change the word “may” to the words “have the privilege to” in order to clarify that it is a privilege to conduct business with SBA and not a right. SBA is also proposing to change the words “Applicant, Participant or lender” to “Applicant or Participant” because the defined terms “Applicant” and “Participant” include by their definitions any lender that is participating or has applied to participate in an SBA program, including for example an SBA lender as defined in Title 13, Section 120.10.

Title 13, Section 103.3. SBA is proposing to remove language from section 103.3 that provides for an appeal to the Office of Hearings and Appeals (OHA) for suspension and revocation of Agents. SBA is proposing to also remove OHA’s jurisdiction over nonprocurement suspension and debarment actions. These changes would conform SBA’s suspension and revocation procedures to the government-wide procedures for nonprocurement suspension and debarment. In addition, SBA is proposing to add that the Agency may publish the names of agents subject to actions under this part in the System for Award Management (SAM), or any

successor system, and on SBA’s Web site.

Title 13, Section 103.4. In the introductory paragraph, SBA is proposing to add the words “but is not limited to” in order to make clear that the list of activities within the section that constitute “good cause” is not exclusive.

In subsections 103.4(b) and (d), SBA is proposing to add the words “or Participant” in order to make clear that the listed actions with regard to both Applicants and Participants constitute unlawful or unethical activity.

In subsection 103.4(d), SBA is also proposing to add language regarding an Agent’s inaccurate representations of endorsement or approval by SBA. In so doing, SBA aims to make clear that an implication or statement of special influence with SBA also includes implications or statements of SBA’s approval or endorsement where those implications or statements are not accurate (i.e., where an Agent has no such approval or endorsement).

In subsection 103.4(f), SBA is proposing to add the words “but not limited to” in order to make clear that the list of conduct within the subsection that constitutes “conduct indicating a lack of business integrity” is not exclusive. In addition, SBA is proposing to clarify the term “false statements” by changing it to “making false or misleading statements or representations,” which would make clear that the type of false statements at issue include misleading statements and representations. SBA is also proposing to move “debarment, criminal conviction, or civil judgment within the last seven years” to a separate sentence, stating that they, when based upon certain conduct, constitute evidence of certain conduct, because they are not actually “conduct” of an agent.

In subsection 103.4(g), SBA is proposing to replace the words “Lender Service Provider or Referral Agent and a Packager for an Applicant” with the words “a Lender Service Provider and a Packager for an Applicant or acting as both a Referral Agent and a Packager for an Applicant” in order to clearly state the specific relationships that constitute the “two master” prohibition set forth in the subsection. SBA is also proposing to add the word “Participant” before each instance of the word “lender” in order to clarify that a lender in this example is a Participant for whom the Agent is acting.

In subsection 103.4(h), SBA is proposing to change the citation “103.5” to “103.39” in order to conform to the redesignation of Section 103.5 as Section 103.39 in this proposed rule. In

subsection 103.4(i), SBA is proposing to add the words “Participant, or Agent” in order to clarify that the section applies to any violations of which the Applicant, Participant, or Agent has been made aware.

In subsection 103.4(i), SBA is proposing to delete the words “of which the Applicant, Participant or Agent has been made aware.” This deletion would clarify the subsection in that the deleted words merely state a point of fact and not a requirement. An Applicant, Participant or Agent has constructive knowledge of SBA’s regulations, policies, and procedures by nature of their publication and thus SBA is not required to prove such knowledge in taking a suspension or revocation action.

Title 13, Sections 103.5 through 103.38. SBA is proposing to redesignate the current Section 103.5 as Section 103.38 and add new Sections 103.5 through 103.37. These sections are similar in substance to the government-wide procedures for nonprocurement suspension and debarment set forth at 2 CFR Part 180. OMB guidance for implementing those procedures was first issued in 1987 [52 FR 20360, May 29, 1987]. OMB revised its guidance in 1988 [53 FR 19160, May 26, 1988] after agencies issued a common rule to implement the suspension and debarment guidance, and again in 1995 [60 FR 33036, June 26, 1995] and 2005 [70 FR 51863, August 31, 2005] to conform to agencies’ updates to the common rule. [68 FR 66534, November 26, 2003]. In 2006 OMB codified final guidance in Title 2 of the CFR [71 FR 66431, November 15, 2006], which, among other things, required agencies to adopt the guidance as the government-wide nonprocurement debarment and suspension procedures instead of the common rule. SBA adopted those procedures in 2007 [72 FR 39728, July 20, 2007], including SBA-specific additions to those procedures as set forth in 2 CFR Part 2700.

In seeking to codify detailed procedures for Agent suspension and revocation, SBA notes that there are clear parallels between the suspension and revocation remedies at SBA and government-wide nonprocurement suspension and debarment remedies: both place a bar on one’s privilege to conduct business with the federal government. Given these clear parallels and the 25-year history of the government-wide nonprocurement suspension and debarment procedures (which have been open to public comment on numerous occasions), SBA has determined that it is logical and appropriate to use the same suspension

and debarment procedures for Agent suspension and revocation. As such, the language and substance of the proposed procedures for Agent suspension and revocation are specifically adapted from those in 2 CFR Parts 180 and 2700 which address suspension and debarment.

Although the language in the proposed procedures is largely identical to those in 2 CFR Parts 180 and 2700, language has been changed to adapt debarment and debarment-specific standards and bases to revocation and revocation-specific standards and bases. A small number of other changes have been made for clarity.

Title 13, Section 103.5. Although not currently formalized in the CFR, SBA's suspending and revoking officials are the same as its suspending and debarring officials. This proposed rule would merely codify this role. Designating the Agency's suspending and debarring officials as the suspending and revoking officials makes sense in that the process and substance of suspension and revocation are similar to those for nonprocurement suspension and debarment.

Title 13, Sections 103.6 through 103.10. These sections of the proposed rule would set forth the process by which SBA determines to issue a suspension and the manner in which it issues the suspension. This includes the bases for suspension, considerations the suspending official must make, and the manner and form in which SBA provides notice of the suspension.

Title 13, Section 103.8. In adapting language from 2 CFR 180.705, SBA is proposing to remove the word "basic," which may lead to confusion as to whether there is a limiting factor regarding which documents the suspending official may examine. Because SBA knows of no such limitation, SBA is not including the word.

Title 13, Sections 103.11 through 103.14. These sections of the proposed rule, which are modeled on comparable sections in Title 2, would set forth the procedures for challenging a suspension, including the time period in which to respond, and the information that must be submitted to respond to the Notice of Suspension.

Title 13, Sections 103.15 through 103.19. These sections of the proposed rule makes it clear that suspensions are not formal proceedings, describe the factors the suspending official will consider in reviewing submissions in opposition to the Notice of Suspension, and how he or she will conduct fact-finding, if necessary, and decide

whether to continue or terminate the suspension.

Title 13, Section 103.16. In adapting language from 2 CFR 180.745, SBA is proposing to change the phrase "If fact-finding is conducted" to "If the suspending official determines that fact-finding is necessary." This change would clarify the procedures for conducting fact-finding if an Agent receives an additional opportunity to challenge the facts on which the suspension is based by stating the circumstances under which fact-finding would occur.

Title 13, Section 103.19. In adapting language from 2 CFR 180.760, SBA is proposing to reword subsection (a) to clarify what is meant by "legal or revocation proceedings." SBA aims to make clear that the time limitation is based upon (a) a revocation proceeding, or (b) legal action on behalf of the government, or if none, then no longer than 12 months. SBA also aims to make clear that the legal action referred to is an action taken by the government regarding the facts giving rise to the suspension, rather than any legal action without limitation. SBA is also proposing to add its Inspector General to those officials from whom SBA may consider a request to extend a suspension, because Part 103 suspension is an SBA-specific remedy, which is likely to not only be affected by ongoing investigation and prosecution by the Department of Justice but also ongoing investigation by SBA's Inspector General.

Title 13, Section 103.20. This section of the proposed rule, adapted from 2 CFR 2700.765, sets forth the right of the subject of a suspension to ask the suspending official to reconsider his or her determination to continue a suspension and the process to make such request. As with the changes to 2 CFR Part 2700, stated above, this section does not provide for an appeal to SBA's Office of Hearings and Appeals because jurisdiction over suspensions is proposed to be removed from the Office of Hearings and Appeals.

Title 13, Sections 103.21 through 103.22. These sections of the proposed rule, which are modeled on comparable sections in Title 2, set forth the process by which SBA would determine to issue a revocation and the manner in which it issues the revocation. This includes the manner and form in which SBA provides notice of the revocation and a statement of when revocation takes effect.

Title 13, Sections 103.23 through 103.26. These sections of the proposed rule, which are modeled on comparable sections in Title 2, set forth the

procedures the subject of a revocation may use to challenge the revocation, including the time period in which to respond, as well as what information must be submitted to respond to the Notice of Proposed Revocation.

Title 13, Sections 103.27 through 103.34. These sections of the proposed rule, which are modeled on comparable sections in Title 2, provide for the procedure and manner in which the revoking official will consider submissions in opposition to the Notice of Proposed Revocation, conduct fact-finding, if necessary, and decide whether to revoke the privilege to conduct business with SBA and the revocation term, as well as how SBA sends notice of the revoking official's decision.

Title 13, Section 103.27. 2 CFR 180.835 states, "Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar." In adapting language from 2 CFR 180.835, SBA proposes to reword subsection (a) from the nonprocurement debarment regulations for the sake of clarity by utilizing more straightforward language.

Title 13, Section 103.28. In adapting language from 2 CFR 180.840, SBA would change the phrase "If fact-finding is conducted" to "If the revoking official determines that fact-finding is necessary." This change would clarify the procedures for conducting fact-finding if an Agent receives an additional opportunity to challenge the facts on which the proposed revocation is based.

Title 13, Sections 103.35 through 103.36. These sections of the proposed rule, which are modeled on comparable sections in Title 2, set forth the procedures by which the subject of a revocation may request reconsideration from the revoking official, including the factors that may influence the revoking official's decision on reconsideration.

Title 13, Section 103.37. This section of the proposed rule sets forth the procedures by which a revoking official may extend a revocation.

Title 13, Section 103.38. This section of the proposed rule, which is modeled on a comparable section in Title 2, sets forth the Agency's ability to impute conduct between individuals and organizations, as well as between organizations.

Title 13, Section 134.102. SBA is proposing to remove jurisdiction over Part 103 suspension and revocation and Title 2 suspension and debarment from the Office and Hearings and Appeals. As such, the final agency decision of SBA with regard to such suspension or revocation and suspension or debarment would be from the debarring or revoking official. This change is being made to bring SBA's nonprocurement suspension and debarment procedures into conformity with the other federal agencies, which do not provide for an additional level of administrative review of suspension and debarment decisions, as well as maintain consistency between the procedures for suspension and revocation with nonprocurement suspension and debarment.

III. Comments Requested

Readers are encouraged to review closely the proposed rule to fully comprehend the extent of the rule and its changes. SBA invites comment on all aspects of this proposed rule, including the underlying policies.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule constitutes a significant regulatory action under the meaning of Executive Order 12866. This proposed rule is not a major rule under the Congressional Review Act. The Regulatory Impact Analysis is set forth below.

1. Necessity of Regulation

Currently, SBA utilizes procedures for Part 103 suspension and revocation for loan program Agents, as adopted in SBA's Standard Operating Procedure 50 53 A. Similar procedures for suspension or revocation of agents in SBA's 8(a) Business Development Program are codified in 13 CFR Part 124.

However, Part 103 suspension and revocation is not limited to Agents under particular SBA programs such as SBA loan programs or the 8(a) Business Development Program. Instead, these remedies, which have long existed, may be used against any Agent, as defined in the regulation. Agents may exist in many other contexts apart from SBA's loan programs or 8(a) Business Development Program but SBA does not currently have detailed written procedures for the suspension and revocation of such Agents.

The proposed changes would clearly codify the same procedures for *all* Agents who are subject to suspension or revocation regardless of the SBA program at issue. In addition, by making the suspension and revocation procedures consistent across programs, SBA intends to alleviate any possible public confusion.

2. Alternate Approaches to Regulation

SBA's alternate options to a single set of agency-wide procedures for Part 103 suspensions and revocations are limited and far less effective than setting forth the procedures in regulation. One alternate option would be to have no written procedures throughout the Agency. However, the proposed regulation is simpler and clearer for the public. Also, without written procedures for suspensions and revocations, those actions would be subjected to greater scrutiny by courts when evaluating them for due process, because due process is more readily achieved where the public is aware of a known and published set of procedures for such actions. As such, SBA finds that amending Part 103 to codify procedures for suspension and revocation avoids the drawbacks of proceeding with no written procedures.

Another alternative that SBA considered was providing a consistent set of procedures by enacting those same procedures through numerous Standard Operating Procedures and policy notices throughout SBA, relating to various SBA programs. However, this too proves to be an inadequate alternative to providing procedures by regulation. The process of identifying the numerous locations to publish such procedures and then publishing in those locations doing so would prove far more burdensome for SBA than placing the procedures in one location within the regulations—Part 103—where suspension and revocation themselves are set forth. This single location for the procedures would also reduce the burden on the public, who would not have to seek out which version of the procedures to follow. It is for these reasons that SBA has determined that the most sensible and appropriate means to provide procedures for Part 103 suspensions and revocations is to place those procedures within the Part 103 regulation itself.

3. Potential Benefits and Costs

By amending Part 103 to codify a standard set of procedures agency-wide, SBA will be poised to make full use of these remedies in combatting fraud, waste, and abuse against the Agency. SBA has already used a similar remedy,

suspension and debarment under 2 CFR Part 180, as an enforcement measure against many types of wrongdoers. Part 103 suspension and revocation, however, provide a remedy against Agents in situations beyond the scope of 2 CFR Part 180 suspension and debarment. In fiscal years 2008 through 2011, SBA suspended 23 Participants (as defined in 2 CFR Part 180) and debarred 86 Participants. These Participants either defrauded the government or were not eligible for the contracts or benefits that they received. Hundreds of millions of dollars had been awarded or paid out by the government to these Participants prior to those suspension and debarment actions, and taking such actions has prevented such Participants from receiving further benefits and/or money. Thus, these actions have saved the government from potentially paying hundreds of millions of further government funds to those wrongdoers during their suspensions or subsequent to their debarments.

SBA expects to achieve similar results from Part 103 suspensions and revocations through the use of consistent procedures for such actions agency-wide. Agents are collectively paid hundreds of millions of dollars by the small business community each year to conduct business with SBA on behalf of Applicants and Participants in SBA programs. By having centralized, consistent procedures, SBA will be able to fully utilize these remedies to limit the proportion of those dollars that goes into the hands of wrongdoers who commit fraud, waste, and abuse of SBA programs and government funds.

Conversely, there are no costs to enacting these amendments to Part 103. No extra requirements are being placed upon those subjected to Part 103 suspensions and revocations. Rather, the codification of these procedures will enable such Agents to better understand their rights and the procedures by which SBA seeks to carry out those suspensions and revocations.

SBA notes that it is the sole agency subject to 2 CFR Part 180 suspensions and debarments that provides for appeals to go to an administrative court. Without being required to exhaust their administrative remedies through the Office of Hearings and Appeals, Agents will be able to receive a final determination by SBA more quickly and without the cost and delay of protracted administrative litigation. SBA believes that the ability to appeal directly to federal court constitutes a benefit to those subjected to suspension, debarment, and revocation.

These amendments to Part 103 also would pose no costs to SBA. The remedies of Part 103 suspension and revocation already exist. Because the proposed procedures are substantially similar to those of 2 CFR Part 180 suspension and debarment, SBA is capable of performing Part 103 suspension and revocation actions with the same resources as it already utilizes for suspension and debarment. Also, the centralization of those procedures also ensures that various elements within SBA are not exercising different versions of these procedures. In addition, by removing the review of the 2 CFR Part 180 suspension and debarment actions from the jurisdiction of Office of Hearings and Appeals, SBA would benefit from decreased burden on that Office.

Executive Order 12988

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

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that the rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. We have developed this rule in a manner consistent with these requirements. Executive Order 13563 also emphasizes that the rulemaking process must allow for public participation and an open exchange of ideas. With regard to this proposed rule, the number and variety of individuals

and entities affected is too broad and varied to allow for meaningful direct participation with the public regarding the procedures set forth in the proposed rule prior to its publication in the **Federal Register**. As such, SBA intends to use the publication of this proposed rule in the **Federal Register** as the primary medium for generating public dialogue on the standards proposed in the rule. Concurrent with publication in the **Federal Register**, SBA will also post a notice on its Web site, including specific program Web sites, to publicize the publication of the rule and to encourage the public to review it and provide comment through www.regulations.gov. After an analysis of any public comments, SBA will consider whether additional efforts are warranted.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule imposes no additional reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA), 44 U.S.C., Chapter 35. Any information reported to SBA as a result of these regulations would be in the context of an administrative action involving the specific individuals facing possible suspension or revocation under these regulations. Information submitted in such proceedings is exempt from the requirements of the PRA.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. As this proposed rule merely sets forth procedures that SBA already substantively utilizes, including the basic elements of due process such as notice and the opportunity to respond, in conducting suspensions and revocations, no part of this proposed rule would impose any significant additional cost or burden.

List of Subjects

2 CFR Part 2700

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

13 CFR Part 103

Administrative practice and procedure, Lawyers.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 134

Administrative practice and procedure, Claims, Lawyers, Organization and functions (Government agencies).

For the reasons stated in the preamble, SBA proposes to amend 2 CFR Part 2700, and 13 CFR Parts 103, 124, and 134 as follows:

PART 2700—NONPROCUREMENT DEBARMENT AND SUSPENSION

- 1. The authority citation for part 2700 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6); Sec 2455, Pub L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

- 2. Amend § 2700.765 by revising the section heading and paragraphs (a) and (c); and by removing paragraph (d) to read as follows:

§ 2700.765 May I ask the suspending official to reconsider a decision to continue my suspension?

(a) If the SBA suspending official issues a decision under § 180.755 to continue your suspension after you present information in opposition to that suspension under § 180.720, you may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

* * * * *

(c) The SBA suspending official must notify you of the decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

§ 2700.890 [Removed]

- 3. Remove § 2700.890.

- 4. Add new § 2700.980 to read as follows:

§ 2700.980 Participant (SBA supplement to governmentwide definition at 2 CFR 180.980).

Participant means, in addition to those individuals and entities listed at 2 CFR 180.980, any Agent as defined in 13 CFR part 103.

Title 13: Business Credit and Assistance

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

■ 5. The authority citation for part 103 is revised to read as follows:

Authority: 15 U.S.C. 634 and 642.

■ 6. Amend § 103.1 as follows:

- a. Revise paragraphs (a), (b)(1) and (b)(2);
- b. Redesignate paragraphs (b)(3) through (b)(5) as (b)(4) through (b)(6);
- c. Add new paragraph (b)(3);
- d. Revise paragraphs (d), (f), and (g).

The revisions and additions read as follows:

§ 103.1 Key Definitions.

(a) *Agent* means a representative authorized to conduct business on behalf of another, including but not limited to an attorney, accountant, consultant, loan agent (such as a packager, referral agent, or lender service provider), or any other person representing an Applicant or Participant by conducting business with SBA.

(b) * * *

(1) Preparing, assisting in the preparation of, 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, assisting in the preparation of, or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) Acting as a Referral Agent, such as a broker, in connection with an applicant's efforts to obtain financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters.

* * * * *

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

* * * * *

(f) *Referral Agent* means a person or entity who identifies and refers an Applicant to a lender or a lender to an

Applicant, such as a broker. The Referral Agent may be employed and compensated by either an Applicant or a lender.

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

■ 7. Amend § 103.2, by revising the first sentence of paragraph (b), to read as follows:

§ 103.2 Who may conduct business with SBA?

* * * * *

(b) If you are an Agent, you have the privilege to conduct business with SBA on behalf of an Applicant or Participant, unless representation is otherwise prohibited by law or the regulations in this part or any other part in this chapter. * * *

§ 103.3 [Amended]

■ 8. Revise § 103.3 to read as follows:

§ 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. SBA may publish the names of agents subject to actions under this part in the System for Award Management, or any successor system, and on SBA's Web site.

■ 9. Amend § 103.4 as follows:

- a. Revise the introductory paragraph;
- b. Revise paragraphs (b), (d), (f), (g), (h) and (i).

The revisions read as follows:

§ 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 with SBA. This includes, but is not limited to:

* * * * *

(b) Soliciting for the provision of services to an Applicant or Participant by another entity when there is an undisclosed business relationship between the two parties.

* * * * *

(d) Implying or stating that the work to be performed for an Applicant or Participant will include use of political or other special influence with SBA or inaccurately representing SBA endorsement or approval. Examples include indicating that the entity is affiliated with or paid, endorsed, approved or employed by SBA, advertising or otherwise holding oneself out to the public using the words *Small*

Business Administration or *SBA* in a manner that inaccurately implies SBA's endorsement, approval or sponsorship, use of SBA's seal or symbol, and giving a "guaranty" to an Applicant or Participant that the application will be approved.

* * * * *

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including but not limited to fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or misleading statements or representations, conspiracy, receiving stolen property, false claims, or obstruction of justice. Debarment, criminal conviction, or civil judgment within the last seven years for such conduct demonstrates evidence of that conduct.

(g) Acting as both a Lender Service Provider and a Packager for an Applicant or acting as both a Referral Agent and a Packager for an Applicant on the same SBA business loan, and receiving compensation for such activity from both the Applicant and Participant lender without full disclosure of compensation to both the Applicant and Participant lender. A limited exception to this "two master" prohibition exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services, acts as a Referral Agent and is compensated by the Participant lender for those activities, discloses the referral activities to the Applicant, and discloses the packaging activities to the Participant lender.

(h) Violating materially the terms of any compensation agreement or Lender Service Provider agreement provided for in § 103.39.

(i) Violating or assisting in the violation of any SBA program requirement, including, without limitation, any requirement imposed by an SBA regulation, policy, procedure, notice, form, or agreement. Such violations include but are not limited to failure to disclose fees paid by an Applicants or Participant when required by SBA program requirements.10. Redesignate § 103.5 as § 103.39.

■ 11. Add new §§ 103.5 through 103.38 to part 103 to read as follows:

Sec.

103.5 Who are the suspending and revoking officials?

103.6 How does SBA provide notification of a suspension or revocation action?

103.7 When may the suspending official issue a suspension?

103.8 What does the suspending official consider in issuing a suspension?

103.9 When does a suspension take effect?

- 103.10 What notice does the suspending official give me if I am suspended?
- 103.11 How may I contest a suspension?
- 103.12 How much time do I have to contest a suspension?
- 103.13 What information must I provide to the suspending official if I contest the suspension?
- 103.14 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 103.15 Are suspension proceedings formal?
- 103.16 How is fact-finding conducted?
- 103.17 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 103.18 When will I know whether the suspension is continued or terminated?
- 103.19 How long may my suspension last?
- 103.20 May I ask the suspending official to reconsider a decision to continue my suspension?
- 103.21 What notice does the revoking official give me if I am proposed for revocation?
- 103.22 When does a revocation take effect?
- 103.23 How may I contest a proposed revocation?
- 103.24 How much time do I have to contest a proposed revocation?
- 103.25 What information must I provide to the revoking official if I contest the proposed revocation?
- 103.26 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed revocation is based?
- 103.27 Are revocation proceedings formal?
- 103.28 How is a fact-finding conducted?
- 103.29 What does the revoking official consider in deciding whether to revoke my privilege to conduct business with SBA?
- 103.30 What is the standard of proof in a revocation action?
- 103.31 Who has the burden of proof in a revocation action?
- 103.32 What factors may influence the revoking official's decision?
- 103.33 How long may my revocation last?
- 103.34 When do I know if the revoking official revokes my privilege to conduct business with SBA?
- 103.35 May I ask the revoking official to reconsider a decision to revoke my privilege to conduct business with SBA?
- 103.36 What factors may influence the revoking official during reconsideration?
- 103.37 May the revoking official extend a revocation?
- 103.38 May the Agency impute conduct of one person to another?

§ 103.5 Who are the suspending and revoking officials?

The suspending and revoking officials are those officials designated as suspending and debaring officials for SBA at 2 CFR § 180.930.

§ 103.6 How does SBA provide notification of a suspension or revocation action?

The suspending or revoking official sends a written notice to the last known street address, facsimile number, or

email address of you or your identified counsel.

§ 103.7 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this part, the suspending official may impose suspension only when that official determines that—

- (a) There exists adequate evidence of any good cause under § 103.4; and
- (b) Immediate action is necessary to protect the public interest.

§ 103.8 What does the suspending official consider in issuing a suspension?

(a) In determining whether there is adequate evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes reasonable evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 103.9 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 103.10 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official will promptly send you a Notice of Suspension advising you—

- (a) That you have been suspended;
- (b) Of the good cause upon which the suspending official relied under § 103.4 for imposing suspension;
- (c) That your suspension is for a temporary period pending the completion of an investigation or

resulting legal or revocation proceedings; and

(d) Of the applicable provisions of this part, and any other agency procedures governing suspension decision making, including appeals and appeal rights.

§ 103.11 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 103.12 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) SBA considers the notice to be received by you—

(1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

§ 103.13 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension.

(b) If you fail to disclose this information, or provide false information, SBA may seek further criminal, civil or administrative action against you, as appropriate.

§ 103.14 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will have an opportunity to challenge the facts if the suspending official determines that your presentation in opposition raises a genuine dispute over facts material to the suspension.

(b) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 103.15 Are suspension proceedings formal?

(a) Suspension proceedings are not formal and formal rules of evidence do not apply. The suspending official will use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ 103.16 How is fact-finding conducted?

(a) If the suspending official determines that fact-finding is necessary—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and SBA agree to waive it in advance. If you want a copy of the transcribed record, you may purchase the record from the transcription service.

§ 103.17 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 103.18 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official

record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ 103.19 How long may my suspension last?

(a) If revocation proceedings or legal action on behalf of the government regarding the facts giving rise to the suspension are initiated at the time of, or during, your suspension, the suspension may continue until the conclusion of those proceedings or legal action. However, if such proceedings or legal action are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if SBA's Inspector General or an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings described under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

§ 103.20 May I ask the suspending official to reconsider a decision to continue my suspension?

(a) If the SBA suspending official issues a decision under § 103.18 to continue your suspension after you present information in opposition to that suspension under § 103.11, you may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) The SBA suspending official must notify you of his or her decision under this section, in writing, using the notice procedures set forth at § 103.6.

§ 103.21 What notice does the revoking official give me if I am proposed for revocation?

After consideration of the causes in § 103.4, if the revoking official proposes to revoke your privilege to conduct business with SBA, the official sends you a Notice of Proposed Revocation, pursuant to § 103.6, advising you—

(a) That the revoking official is considering revoking your privilege to conduct business with SBA;

(b) Of the reasons for proposing to revoke your privilege to conduct business with SBA in terms sufficient to put you on notice of the conduct or transactions upon which the proposed revocation is based;

(c) Of the good cause under § 103.4 upon which the revoking official relied for proposing your revocation; and

(d) Of the applicable provisions of this part, and any other agency procedures governing revocation.

§ 103.22 When does a revocation take effect?

A revocation is not effective until the revoking official issues a decision. The revoking official does not issue a decision until the respondent has had an opportunity to contest the proposed revocation.

§ 103.23 How may I contest a proposed revocation?

If you as a respondent wish to contest a proposed revocation, you or your representative must provide the revoking official with information in opposition to the proposed revocation. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 103.24 How much time do I have to contest a proposed revocation?

(a) As a respondent you or your representative must send the information and argument to the revoking official within 30 days after you receive the Notice of Proposed Revocation.

(b) SBA considers the Notice of Proposed Revocation to be received by you—

(1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

§ 103.25 What information must I provide to the revoking official if I contest the proposed revocation?

(a) In addition to any information and argument in opposition, as a respondent your submission to the revoking official must identify specific facts that contradict the statements contained in

the Notice of Proposed Revocation. Include any information about any of the factors listed in § 103.4. A general denial is insufficient to raise a genuine dispute over facts material to the revocation.

(b) If you fail to disclose this information, or provide false information, SBA may seek further criminal, civil or administrative action against you, as appropriate.

§ 103.26 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed revocation is based?

(a) You as a respondent will have an additional opportunity to challenge the facts if the revoking official determines that your presentation in opposition raises a genuine dispute over facts material to the proposed revocation.

(b) If you have an opportunity to challenge disputed material facts under this section, the revoking official or designee must conduct additional proceedings to resolve those facts.

§ 103.27 Are revocation proceedings formal?

(a) Revocation proceedings are not formal and formal rules of evidence do not apply. The revoking official will use flexible procedures in creating an official record upon which the official will base a final revocation decision.

(b) You or your representative must submit any documentary evidence you want the revoking official to consider.

§ 103.28 How is fact-finding conducted?

(a) If the revoking official determines that fact-finding is necessary—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and SBA agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 103.29 What does the revoking official consider in deciding whether to revoke my privilege to conduct business with SBA?

(a) The revoking official may revoke your privilege to conduct business with SBA for any of the causes in § 103.4. However, the official need not revoke your privilege to conduct business with SBA even if a cause for revocation exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 103.32.

(b) The revoking official bases the decision on all information contained in

the official record. The record includes—

(1) All information in support of the revoking official's proposed revocation;

(2) Any further information and argument presented in support of, or in opposition to, the proposed revocation; and

(3) Any transcribed record of fact-finding proceedings.

(c) The revoking official may refer disputed material facts to another official for findings of fact. The revoking official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 103.30 What is the standard of proof in a revocation action?

(a) In any revocation action, SBA must establish the cause for revocation by a preponderance of the evidence.

(b) If the proposed revocation is based upon a conviction or civil judgment, the standard of proof is met.

§ 103.31 Who has the burden of proof in a revocation action?

(a) SBA has the burden to prove that a cause for revocation exists.

(b) Once a cause for revocation is established, you as a respondent have the burden of demonstrating to the satisfaction of the revoking official that revocation is not necessary.

§ 103.32 What factors may influence the revoking official's decision?

This section lists the mitigating and aggravating factors that the revoking official may consider in determining whether to revoke your privilege to conduct business with SBA and the length of your revocation period. The revoking official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of whether revocation is necessary. In making a revocation decision, the revoking official may consider the following factors:

(a) The actual or potential harm or impact that result or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the revocation action, the existence of this fact may be used by the revoking official in determining that you

have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for revocation specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is based on conduct similar to one or more of the causes for revocation specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for revocation.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the revoking official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether you took appropriate corrective action or remedial measures to correct your wrongdoing.

(k) Other factors that are appropriate to the circumstances of a particular case.

§ 103.33 How long may my revocation last?

(a) If the revoking official decides to revoke your privilege to conduct business with SBA, your period of revocation will be based on the seriousness of the cause(s) upon which your revocation is based.

(b) In determining the period of revocation, the revoking official may consider the factors in § 103.32. If a suspension has preceded your revocation, the revoking official must consider the time you were suspended.

§ 103.34 When do I know if the revoking official revokes my privilege to conduct business with SBA?

(a) The revoking official must make a written decision within 45 days of closing the official record. The official record closes upon the revoking official's receipt of final submissions,

information and findings of fact, if any. The revoking official may extend that period for good cause.

(b) The revoking official sends you written notice, pursuant to § 103.6, that the official decided either—

(1) Not to revoke your privilege to conduct business with SBA; or

(2) To revoke your privilege to conduct business with SBA. In this event, the notice:

(i) Refers to the Notice of Proposed Revocation;

(ii) Specifies the reasons for your revocation; and

(iii) States the period of your revocation, including the effective dates.

§ 103.35 May I ask the revoking official to reconsider a decision to revoke my privilege to conduct business with SBA?

Yes, you may ask the revoking official to reconsider the revocation decision or to reduce the time period or scope of the revocation. However, you must put your request in writing and support it with documentation.

§ 103.36 What factors may influence the revoking official during reconsideration?

The revoking official may reduce or terminate your revocation based on—

(a) Newly discovered material evidence not previously available;

(b) A reversal of the conviction or civil judgment upon which your revocation was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the revocation was imposed; or

(e) Other reasons the revoking official finds appropriate.

§ 103.37 May the revoking official extend a revocation?

(a) Yes, the revoking official may extend a revocation for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the revoking official may not extend a revocation solely on the basis of the facts and circumstances upon which the initial revocation action was based.

(c) If the revoking official decides that a revocation for an additional period is necessary, the revoking official must follow the applicable procedures in this part to extend the revocation, at §§ 103.21 through 103.36 of this part.

§ 103.38 May the Agency impute conduct of one person to another?

For purposes of actions taken under this rule, SBA may impute conduct as follows:

(a) Conduct imputed from an individual to an organization. SBA may

impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) Conduct imputed from an organization to an individual, or between individuals. SBA may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) Conduct imputed from one organization to another organization. SBA may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 13. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d); 42 U.S.C. 9815; Pub. L. 99–661; Pub. L. 100–656; sec. 1207, Pub. L. 101–37; Pub. L. 101–574; sec. 8021, Pub. L. 108–87.

§ 124.4 [Amended]

■ 14. Amend § 124.4 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

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

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

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c);

E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

§ 134.102 [Amended]

■ 16. Amend § 134.102 by removing and reserving paragraphs (c) and (p).

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2014–22521 Filed 10–14–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0751; Directorate Identifier 2013–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Kidde Graviner

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Kidde Graviner hand-operated fire extinguishers as installed on, but not limited to, various transport and small airplanes. This proposed AD was prompted by a report that a fire extinguisher failed to operate when the activation lever was pressed. This proposed AD would require modifying the affected fire extinguishers. We are proposing this AD to prevent fire extinguishers from failing to operate in the event of a fire, which could jeopardize occupants' safety and continuation of safe flight and landing.

DATES: We must receive comments on this proposed AD by December 1, 2014.

ADDRESSES: You may send comments by any of the following methods:

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• **Fax:** (202) 493–2251.

• **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Kidde