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SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

RIN 3245–AI74

Rescinding Unnecessary Notice and Comment Procedures

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule rescinds the Administration's policy of engaging in notice and comment rulemaking even where the Administrative Procedure Act does not require notice and comment rulemaking. As a result of this final rule, the Administration will follow the default requirements of the Administrative Procedure Act. The Administration will reserve the right to engage in voluntary notice and comment rulemaking even where not required by the Administrative Procedure Act as a matter of policy on a case by case basis.

DATES: The final rule is effective August 31, 2026.

FOR FURTHER INFORMATION CONTACT: Jennifer Prescott, Deputy General Counsel, *Jennifer.Prescott@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act (APA) generally requires, before an agency promulgates a regulation through informal rulemaking, a ''notice of proposed rule making'' to be published in the **Federal Register**. 5 U.S.C. 553(b). The agency then must ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.'' 5 U.S.C. 553(c). These strictures, however, do not apply to matters ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' 5 U.S.C. 553(a)(2).

In 1974, the Small Business Administration (SBA) promulgated a regulation at 13 CFR 101.9 titled ''Public participation in rulemaking'' that provided, in part, that, ''SBA is governed as a matter of policy by the public participation provisions of the Administrative Procedure Act, 5 U.S.C. 553, notwithstanding the exemptions given by such section 553 for matters relating to agency management or personnel, or to public property, loans, grants, benefits, or contracts.'' *See* 39 FR 43815, December 19, 1974. This rule was subsequently redesignated and revised in 1996 to § 101.108 titled ''Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?'' which states, ''Yes. Despite these exemptions, SBA will follow the public participation requirements of the Administrative Procedure Act, 5 U.S.C. 553, in rulemakings relating to public property, loans, grants, benefits, or contracts.'' *See* 61 FR 2394, January 26, 1996.

II. Analysis

The SBA has decided to rescind the policy in § 101.108. Upon reconsideration and in the Agency's discretion, the SBA has decided that it is proper to return to the text of the APA regarding its enumerated exceptions for matters relating to public property, loans, grants, benefits, and contracts. The SBA has a new policy of acting more nimbly in response to changing circumstances and this rescission will allow for that. To the extent public participation is determined to be advantageous, the SBA may still request public comments through notices of proposed rulemaking. The SBA will continue to comply with the APA's notice and comment requirements where required and otherwise has discretion to seek public input through whatever means it determines appropriate.

III. Justification for Final Rule

This rule is exempt from the prior notice and comment requirements of the Administrative Procedure Act (APA) because it is a general statement of policy. 5 U.S.C. 553(b)(A). This policy was originally published in the **Federal Register** as a notice from the Administrator, 36 FR 16716 (August 25, 1971), and only subsequently codified in the Code of Federal Regulations as an organizational matter, 39 FR 43815 (December 19, 1974). Alternatively, it is a rule of agency organization, procedure, and practice because it is not binding on outside parties and only affects the manner in which they may present their views to the agency. 5 U.S.C. 553(b)(A). Further, because it is not a substantive rule, and because it relieves a restriction, this rule is exempt from the APA's requirement of a 30-day delay in the effective date. *See* 5 U.S.C. 553(d).

IV. Compliance With Executive Orders 12866, 12988, 13132, 14192, 14219, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), the Congressional Review Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Office of Management and Budget determined that this rule will be a ''significant regulatory action,'' and therefore, is subject to review under section 6(b) of E.O. 12866, dated September 30, 1993. Accordingly, this rule has been submitted to OMB for review.

Cost-Benefit Analysis

This rule rescinds 13 CFR 101.108, an SBA policy that voluntarily imposed APA notice-and-comment procedures even where such procedures were not legally required. The rescission returns the SBA to the default rulemaking requirements of the APA (5 U.S.C. 553), aligning internal procedure with statute and eliminating SBA's self-imposed procedural burden. The rule has the primary benefit of increasing regulatory efficiency and responsiveness by removing an internal requirement that is not required by law, which slows down regulatory and deregulatory actions. Specifically, removing the requirement to solicit comments on rulemakings involving public property, loans, grants, benefits, or contracts:

- Allows policy changes and their associated benefits to be implemented more quickly, enhancing agility in responding to evolving programmatic or operational needs in areas where Congress has given the SBA broad discretion.
- Streamlines agency decision-making for programs relating to public property, loans, grants, benefits, or contracts.
- Saves staff time and resources that would otherwise be devoted to preparing, publishing, and responding to public comments.

The benefits of more quickly adopting new policy changes cannot be quantified as they will depend on the impact of future rules which are unknown. Depending on the nature of future proposed rules, quicker policy adoption may benefit the Administration, the general public, or both. The benefits of the rule are also expected to result in streamlined decision-making and meaningful reductions in implementation costs and time burdens for the SBA, some of which are difficult to quantify. The cost savings of reducing agency resources expenditures, however, can be quantified. Between 2021 and 2025, the Administration proposed 33 rules.[1] Assuming response to comments on a proposed rule requires an average of 40 hours of an employee at GS–13 Step 5 this will be $4,247 per avoided proposed rule.[2] Assuming the Administration will continue rulemaking at a similar rate as before this change, the annual cost savings of this change would be $28,029. The general public will also see cost savings in avoided time drafting and submitting public comments. Assuming the public spends an average of 20 hours writing comments on each rule and their time is valued at the average U.S. hourly wage of $32.66,[3] the public will be expected to save $4,311 per year. In total, the quantified annual cost savings of this rule is $32,340.

There may be potential disbenefits of avoiding the public comment period, if the public comments offer information and suggestions that improve the SBA's regulations. The associated disbenefits are expected to be minor as the SBA can still solicit public comments on a case by case basis whenever it perceives the benefits of doing so are expected to exceed the costs.

The SBA has considered maintaining the current policy or replacing it with a narrower procedural commitment (*e.g.,* limiting it to certain programs). However, the SBA believes its rescission offers a clearer legal and operational baseline in line with the APA.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate drafting errors and ambiguity, reduce burden, and provide a clear legal standard for affected conduct. The action does not have retroactive or preemptive effect.

[1] **Federal Register** :: Document Search Note semiannual regulatory agendas were excluded.

[2] The Salary of a GS 13 Step 5 in the Washington, DC area is $138,024 in 2026 (SALARY TABLE 2026–DCB), so 40 hours of time is $2,654. This is then multiplied by 1.6 to account for benefits and overhead.

[3] 2024 Occupational Employment and Wage Statistics

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132, *Federalism.* It 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, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

Executive Order 14192

This final rule is expected to be an Executive Order 14192 deregulatory action with a quantified annualized net savings of $32,340 in 2026 dollars. This rule will remove 13 CFR 101.108 in its entirety.

Executive Order 14219

On February 19, 2025, the President issued Executive Order 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 14219, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. SBA has engaged in this process and has identified 13 CFR 101.108 as appropriate for removal in accordance with Executive Order 14219.

Paperwork Reduction Act

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.,* provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. The Office of Information and Regulatory Affairs has reviewed this rulemaking and found that it does not meet the criteria set forth in 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the 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, the RFA requires such analysis only where notice and comment rulemaking is required. As discussed above, SBA is not required to publish the rule for notice and comment in accordance with Section 553(b)(A) of the APA. Accordingly, SBA is not required to conduct a regulatory flexibility analysis and is publishing this rule as a final rule without advance notice and public comment.

List of Subjects in 13 CFR Part 101

Administrative practice and procedures, Authority delegations (Government agencies), Intergovernmental relations, Investigations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, SBA amends 13 CFR part 101 as follows:

PART 101—ADMINISTRATION

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 552 and App. 3, secs. 2, 4(a), 6(a), and 9(a)(1)(T); 15 U.S.C. 633, 634, 687; 31 U.S.C. 6506; 44 U.S.C. 3512; 42 U.S.C. 6307(d); 15 U.S.C. 657h; E.O. 12372 (July 14, 1982), 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by E.O. 12416 (April 8, 1983), 48 FR 15887, 3 CFR, 1983 Comp., p. 186.

§ 101.108 [Removed and Reserved]

■ Remove and reserve § 101.108.

Kelly Loeffler,

Administrator.

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