

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245-AF77

Surety Bond Guarantee Program; Disaster and Miscellaneous Amendments

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This Proposed Rule would implement the authority provided by the Small Business Disaster Response and Loan Improvements Act of 2008 for issuing surety bond guarantees for contracts and orders related to a major disaster. The Proposed Rule would also clarify that the Small Business Administration (SBA) does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

DATES: Comments must be received on or before May 26, 2010.

ADDRESSES: You may submit comments, identified by RIN 3245-AF77 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Office of Surety Guarantees, Suite 8600, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please submit the information to Ms. Barbara Brannan, Special Assistant, Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416 or send an e-mail to barbara.brannan@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: Ms. Barbara J. Brannan, Office of Surety Guarantees, 202-205-6545, e-mail: barbara.brannan@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

SBA guarantees a portion of bid, payment and performance bonds on contracts up to \$2 million for small and emerging contractors who cannot obtain Surety bonds through regular commercial channels. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities. The Proposed Rule includes four proposed revisions to 13 CFR 115. Three of the four revisions would implement the authority granted to the Agency in § 12079 of subtitle B of title XII of Public Law 110-246. The fourth revision would clarify that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

Section 12079 of Public Law 110-246 sets forth the bonding thresholds for any procurement related to a major disaster. For Contracts and Orders, as defined in 13 CFR 115.10, related to a major disaster, a new provision would be added to SBA regulations, 13 CFR 115.12(e)(5), to authorize SBA to approve, under certain conditions, an SBA bond guarantee on an individual Contract or Order up to \$5,000,000 at the time of bond execution. For products or services procured under non-Federal Contracts or Orders up to \$5,000,000, an SBA bond guarantee may be issued if the products will be manufactured or the services will be performed in the major disaster area identified in the Federal Emergency Management Agency (FEMA) Web site. SBA finds that the manufacturing of any products or the performance of any services in the disaster area will assist recovery efforts in the disaster area by generating economic activity and that, therefore, these procurements are reasonably related to the major disaster.

For products or services procured under a Federal Contract or Order up to \$5,000,000, an SBA bond guarantee may be issued if: (a) The products will be manufactured or the services will be performed in the major disaster area

identified in the FEMA Web site; or (b) the products will be manufactured or the services will be performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area. The SBA bond guarantee may be issued on a Federal Contract or Order that meets one of the above two conditions up to \$10,000,000 at the request of the Head of the Agency involved in disaster reconstruction efforts.

In addition, SBA believes that recovery efforts after a major disaster will generally continue for the first 12 months after the disaster is declared. Accordingly, the Proposed Rule provides that SBA's authority to guarantee bonds in the amounts authorized by Public Law 110-246 for a particular disaster would apply only during the 12 months following the disaster declaration unless SBA extends, in its discretion, the authority for such disaster. SBA will publish a notice of any extension in the **Federal Register**.

This new bond authority is also subject to the availability of funds appropriated in advance specifically to carry out § 12079 of Public Law 110-246. In accordance with the new authority, the definition of Applicable Statutory Limit set forth in 13 CFR 115.10 would be revised, and a new definition for Head of Agency would be added to 13 CFR 115.10.

In addition, the Proposed Rule would clarify that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract. As insurance and indemnification requirements may appear in Contracts, SBA is proposing to add a new paragraph (5) to § 115.16(f) to clarify that SBA excludes the following from the losses covered by the SBA guarantee: (1) Any costs that arise from the Principal's failure to secure and maintain insurance coverage required by the Contract or Order; (2) any costs that result from any claims or judgments that exceed the amount of any insurance coverage required by the Contract or Order; and (3) any costs that arise from any agreement by the Principal in the Contract or Order to indemnify the Oblige or any other Persons.

II. Section by Section Analysis

Section 115.10. SBA is proposing to revise the definition of the term, "Applicable Statutory Limit" to reflect

that the maximum amount of any Contract or Order for which the Agency may issue a surety bond guarantee may be set by statutory provisions other than § 411(a) of the Small Business Investment Act, such as by § 12079 of Public Law 110–246. SBA is also proposing to add a new definition for “Head of Agency” to implement § 12079(b) of Public Law 110–246.

Section 115.12(e)(5). SBA is proposing to add a new provision relating to the new surety bond guarantee authority provided under § 12079 of Public Law 110–246 for Contracts and Orders related to a major disaster area. This new authority would apply to an individual Contract or Order up to \$5,000,000 at the time of bond execution. For products or services procured under non-Federal Contracts or Orders up to \$5,000,000, an SBA bond guarantee may be issued if the products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site. For products or services procured under a Federal Contract or Order up to \$5,000,000, an SBA bond guarantee may be issued if: (a) The products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site; or (b) the products are manufactured or the services are performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area. The SBA bond guarantee may be issued on a Federal Contract or Order that meets one of the above two conditions up to \$10,000,000 at the request of the Head of the Agency involved in disaster reconstruction efforts.

In addition, this provision would apply to a Contract or Order for which an offer is submitted or award made within 12 months from the date an area is designated a major disaster area as identified in the FEMA Web site at <http://www.fema.gov>. SBA may, at its discretion, extend this time period for any particular disaster. SBA expects that it would consider extending the time period only where efforts to recover from the major disaster were still underway one year after its occurrence. SBA will publish a notice of any extension in the **Federal Register**. The new bond authority is also expressly conditioned on the appropriation of funds in advance.

Section 115.16(f). SBA is proposing to add a new paragraph (5) to clarify that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract. As insurance and indemnification

requirements may appear in Contracts, SBA is proposing to clarify that the following costs are excluded from the losses covered by the SBA guarantee: (1) Any costs that arise from the Principal’s failure to secure and maintain insurance coverage required by the Contract or Order; (2) any costs that result from any claims or judgments that exceed the amount of any insurance coverage required by the Contract or Order; and (3) any costs that arise from any agreement in the Contract or Order by the Principal to indemnify the Oblige or any other Persons.

Compliance With Executive Orders 12866, 12988, and 13132, 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 rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

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.

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

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

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 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, 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. There are approximately one dozen Sureties that participate in the SBA program, and no part of this Proposed Rule would impose any significant additional cost or burden on them.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR Part 115 as follows:

PART 115—SURETY BOND GUARANTEE

1. The authority citation for part 115 is revised to read as follows:

Authority: 5 U.S.C. app. 3; 15 U.S.C. 687b, 687c, 694a, 694b note, Pub. L. 106–554; Pub. L. 108–447, Div K, § 203; Pub. L. 110–246, § 12079, 122 Stat. 1651; and Pub. L. 111–5, 123 Stat. 115.

2. In § 115.10, revise the definition of “Applicable Statutory Limit” and add the definition of “Head of Agency” to read as follows:

§ 115.10 Definitions.

* * * * *

Applicable Statutory Limit means the maximum amount of any Contract or Order for which § 411(a) of the Small Business Investment Act, as amended from time to time, or other law, authorizes SBA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond.

* * * * *

Head of Agency means in the case of a cabinet department, the Secretary; and in the case of an independent commission, board, or agency, the Chair or Administrator; or any person to whom the Secretary, Chair, or Administrator has directly delegated the authority to request SBA to guarantee bonds on Contracts or Orders in excess of \$5,000,000.

* * * * *

3. In § 115.12, add paragraph (e)(5) to read as follows:

§ 115.12 General program policies and provisions.

* * * * *

(e) * * *

(5) *Guarantee authority for Contracts and Orders related to a major disaster area.* Subject to the availability of funds appropriated in advance specifically for the purpose of guaranteeing bonds for any Contract or Order related to a major disaster, SBA may guarantee bonds on any Contract or Order under the following terms and conditions:

(i) The Contract or Order does not exceed \$5,000,000 at the time of bond execution, and:

(A) For products or services procured under a Federal Contract or Order, the products will be manufactured or the services will be performed in the major disaster area identified in the Federal Emergency Management Agency (FEMA) Web site at <http://www.fema.gov>, or the products will be manufactured or the services will be performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area; or

(B) For products or services procured under any other Contract or Order, the products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site at <http://www.fema.gov>;

(ii) At the request of the Head of the Agency involved in reconstruction efforts in response to a major disaster, SBA may guarantee bonds on Federal Contracts or Orders in excess of \$5,000,000, but not more than \$10,000,000;

(iii) The restrictions set forth in § 115.12(e)(3) do not apply to the guarantees issued under this paragraph (e)(5); and

(iv) A guarantee may be issued under this paragraph (e)(5) for any Contract or Order for which an offer is submitted or an award is made within 12 months from the date an area is designated a major disaster area in the **Federal Register**. SBA may, at its discretion, extend this time period for any particular disaster, and will publish a notice of the extension in the **Federal Register**.

* * * * *

4. Amend § 115.16 as follows:
- Remove the word “and” at the end of paragraph (f)(3);
 - Remove the punctuation “.” at the end of paragraph (f)(4); and
 - Add paragraph (f)(5) to read as follows:

§ 115.16 Determination of Surety's Loss.

* * * * *

(f) * * *

(5) Any costs that arise from the Principal's failure to secure and maintain insurance coverage required by the Contract or Order, or any costs that result from any claims or judgments that exceed the amount of any insurance coverage required by the Contract or Order, as well as any costs that arise as a result of any agreement by the Principal in the Contract or Order to indemnify the Oblige or any other Persons.

Karen G. Mills,
Administrator.

[FR Doc. 2010-9434 Filed 4-23-10; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 33**

[Docket No. FAA-2010-0398; Notice No. 10-06]

RIN 2120-AJ62

Airworthiness Standards; Rotor Overspeed Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the aircraft turbine engine rotor overspeed type certification standards. This action would establish uniform rotor overspeed design and test requirements for aircraft engines and turbochargers certificated by the FAA and the European Aviation Safety Agency (EASA). The proposed rule would also establish uniform standards for the design and testing of engine rotor parts in the United States and in Europe, eliminating the need to comply with two differing sets of requirements. The proposed rule would improve safety by clarifying existing overspeed requirements for aircraft turbine engine rotor parts.

DATES: Send your comments on or before July 26, 2010.

ADDRESSES: You may send comments identified by docket number FAA-2010-0398 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send Comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground

Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Fax: 1-202-493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Tim Mouzakis, Engine and Propeller Directorate Standards Staff, ANE-111, Engine and Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7114; fax (781) 238-7199; e-mail timoleon.mouzakis@faa.gov. For legal questions concerning this proposed rule contact Vincent Bennett, ANE-7, Office of Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7044; fax (781) 238-7055; e-mail vincent.bennett@faa.gov.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of