

Proposed Rules

Federal Register

Vol. 89, No. 223

Tuesday, November 19, 2024

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

[Agency Docket Number: SBA–2023–0009]

RIN 3245–A106

Surety Bond Guarantee Program: Streamlining and Modernizing

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to amend its regulations for the Surety Bond Guarantee Program to reduce the burden on participating surety companies for submission and retention of documents. SBA is also correcting conflicting provisions, as well as revising the obsolete preferred surety admissions requirements and the Quarterly Contract Completion Report.

DATES: SBA must receive comments to this proposed rule on or before January 21, 2025.

ADDRESSES: Identify your comments by Docket No. SBA–2023–0009 or RIN 3245–A106 and submit them by one of the following methods: (1) Federal eRulemaking Portal:

www.regulations.gov. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Kevin Valdes, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416.

SBA will post all comments to this proposed rule 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 U.S. Small Business Administration, Kevin Valdes, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416, or send an email to Kevin.Valdes@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 your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Kevin Valdes, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416, (202) 816–0137 or Kevin.Valdes@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

SBA is amending several regulations applicable to its Surety Bond Guarantee (SBG) program. SBA guarantees bid, payment, and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee, authorized pursuant to part B of title IV of the Small Business Investment Act of 1958, 15 U.S.C. 694a *et seq.*, gives Sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities. SBA's guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract.

As part of its ongoing responsibility to ensure that the rules it issues align with surety industry practices and do not have an adverse economic impact on those affected by those rules, SBA held a series of listening sessions with Surety professionals for input about their experiences using the SBG program. Findings of the listening sessions and additional impact studies resulted in the decision to change and clarify several current procedures and regulations to improve customer experience and better enable modernization efforts within the SBG program.

II. Prior Approval Agreement: § 115.11, § 115.30(b) and (d)

Current SBA regulation 13 CFR 115.11 requires prospective Surety Partners to submit applications by mail. SBA proposes adding the option to email Surety Partner application packages. This change will modernize regulation to align with current business practices.

The SBG program requires signed certification by Surety Partners

participating in SBA's Prior Approval program each time a bond application is submitted to the program. Each signed form certifies small business program eligibility, the need for program assistance, and the accuracy of applicant information. The certification process involves completion of the SBA Form 990 fields (normally electronically) along with download, signature, and re-upload of the form to SBA's Capital Access Financial System (CAFS). In SBA's Preferred Surety Bond (PSB) program, SBA Form 990 is not required due to delegated authority and a written Surety Partner participation agreement that blanketly certifies the same items as in SBA Form 990. SBA proposes removing the signature requirement in 115.30(b) for each application and replace with a master certification.

All Prior Approval participants surveyed agreed that having a Surety Partner participation agreement for the Prior Approval program would greatly benefit program participants by removing SBA's requirement to individually certify every application submission. SBA proposes changes to 13 CFR 115.30(d) to require a new Prior Approval Agreement between SBA and the Prior Approval Surety Partner which will contain a master certification for all the applications to follow. This removes the need for each application to be individually certified. SBA estimates the new agreements would reduce application time burden on program participants by 557 hours, or \$15,818 according to fiscal year 2023 program activity.

III. Streamline Fee Collection Process: § 115.19(g), § 115.32(b) and (d), and § 115.66

Currently, SBA requires two fees to support surety bonds on awarded contracts: a fee charged to the Surety company under § 115.32(a), and a fee charged to the small business contractor under § 115.32(b). SBA's SBG program requires that the payment of SBA contractor fees be submitted by small business applicants at the time of application approval. For the Prior Approval program, § 115.32(b) requires that the contractor must submit receipt of the payment to SBA before an application is given final approval, and § 115.32(d) requires that for bond increases the Principal must submit the

increased fee upon notification of the increase in the contract or bond amount. For the PSB program, § 115.66 requires the PSB Surety remit SBA's Premium share and the Principal's guarantee fee with the bordereau listing the related Final Bond, as required in the PSB Agreement.

While payments are verified via payment receipt, the receipt of the payments by SBA are not always successful due to a variety of issues that can occur during the processing of the payment. When contractor fee payments are unsuccessful, SBA must seek remittance of the delinquent payments due to SBA from the small businesses through surety professional participants in both PSB and Prior Approval programs. If still unsuccessful, a small business becomes ineligible for further SBA guarantees and SBA writes off the delinquent debt. Over the last five fiscal years, SBA wrote off over \$100,000 in uncollected contractor fees. Relatedly, SBA surety fee payments are due to SBA within 60 days of a guarantee's approval. Surety companies remit these payments directly to SBA. While delinquency is periodically an issue, SBA has not written off any surety fees over the last five fiscal years.

All surety professional participants surveyed stated SBA's contractor fee collection process is incongruent with surety industry practice for premium (industry fee) collection. Instead of small businesses directly paying surety bond companies for each individual premium due, surety bond companies typically bill premiums (fees) due to surety bond agencies (intermediaries) representing applicant businesses via monthly billing statements. Collection is directly from these agencies, net their commission. The agencies independently manage premium collection from applicant businesses and are responsible for payment to surety bond companies. The industry almost always issues bonds before receiving premium.

Prior Approval survey participants all stated SBA's current contractor fee collection requirements delay the bonding process since payment cannot be made prior to an initial intent-to-approve from SBA and the surety bond cannot be issued until payment is made by the small business. Two participants noted a small business can sometimes take days to pay SBA's fee, which further delays the bonding process.

SBA proposes streamlining fee collection by changing regulations to allow SBA merger of contractor fee collection procedures into the same process as SBA surety fee collection. The regulatory changes would allow

SBA to procedurally adjust contractor fee collection to be with Surety Partners in the same format as current surety fee collection. Likewise, any guarantee fee refund owed by SBA will be remitted to the Surety that collected the fee from the Principal. The new process will be the same for the Prior Approval and PSB Sureties.

SBA estimates the change would reduce application time burden on program participants and small businesses by approximately 568 hours per year, or roughly \$14,495 in annual savings, on average. To estimate time burden, the SBA relies on a combination of FY2023 program data and interviews with program participants and small businesses. The change would shift small business contractor fee remittance to SBA from small businesses to Surety Partners, enable the industry to align their SBA contractor fee collection procedures with industry fee collection practices, and reduce the amount of uncollectible fees with small businesses.

The proposed change is estimated to save each impacted small business an average of 5 minutes per response, or a total of 284 total burden hours for all small businesses. To quantify the value of time saved, the SBA relies on the most recently available Bureau of Labor Statistics (BLS) wage data and assumes that the representative impacted small business occupation would be "miscellaneous construction and related workers." The median wage from 2023 for this occupation was \$22.64. In FY2023, there were approximately 3,406 small businesses in the program which brings the estimated total burden hours saved for small businesses per year to roughly 284. The total annual savings that the SBA estimates for small businesses as a result of the proposed changes comes to \$6,430 ($\23×284), on average.

To quantify the value of time saved for program participants, the SBA relies on BLS wage data and assumes that the representative impacted occupation would be "insurance sales agents". The median wage from 2023 for this occupation was \$28.40. Using the same program data from FY2023, the estimated total burden hours saved for program participants per year comes to 284. The total annual savings that the SBA estimates for program participants as a result of the proposed changes comes to \$8,066 ($\28×284), on average.

IV. Quarterly Contract Completion Report: § 115.22

Currently, 13 CFR 115.22 requires Surety Partners to submit a quarterly certification report detailing all contracts for guaranteed bonds that were

completed during the most recent quarter. The report was implemented in 2017 with the intention of ensuring that fees due for increases on successfully completed contracts are accurately calculated and paid timely. At that time, industry commented on the proposed rule that the report creates an administrative burden on Surety Partners. During SBA's recent survey, participants stated the industry typically considers contracts up to \$250,000 complete upon the estimated completion date on file without verification. In fiscal year 2023, over 43% of guaranteed bonds for awarded contracts were within this range. Surety Partners for the program have stated reporting details, such as the contract completion date, can require additional work when contracts are within this range.

SBA proposes modifying the regulation to allow SBA to set the timeframe. The change will create greater program office agility in adapting completion reporting to the practices of the industry. It will also allow the program office to adjust internal guarantee closeout monitoring procedures to secure collection of deferred fees due at the time of contract completion.

V. Surety Bonding Line: § 115.19(f)(1)(i), § 115.33(b)(1)

Currently, 13 CFR 115.33(b)(1) allows Sureties participating in SBA's Prior Approval program to submit applications up to 15 days after bond execution under an SBA-approved bonding line. However, 13 CFR 115.19(f)(1)(i) requires bonds be approved by SBA prior to execution. The two regulations conflict and must be reconciled to allow SBA acceptance of executed bonds under an SBA bonding line. SBA is also clarifying when a bonding line expires in 13 CFR 115.33(b)(1). Currently, regulations state "not to exceed 1 year." However, SBA bonding lines cannot extend past the originated fiscal year per allocated funding restrictions of the program. SBA proposes modifying current regulatory language by removing the conflicting requirement in 13 CFR 115.19(f)(1)(i) and clarify its effective period in 13 CFR 115.33(b)(1).

VI. Revisions to Underwriting and the Preferred Surety Bond (PSB) Program: § 115.11, § 115.60, § 115.65(b)

SBA's Preferred Surety Bond (PSB) program is for sureties that seek delegated authority to approve SBA guaranteed surety bonds. Sureties can be selected to participate in the PSB program if they meet criteria established

by SBA. Once approved, the surety enters into a PSB Agreement with SBA under which the surety can issue, monitor, and service SBA-guaranteed bonds without SBA's prior approval of the bond guarantee.

SBA proposes revising its admissions policies for PSB sureties. The admissions criteria for PSB sureties found in 13 CFR 115.60 that SBA proposes for revision include the minimum underwriting limit assigned by the U.S. Treasury of \$6,500,000.00, the limit on the proportion of government-backed bonds to their overall premium income, and the requirement that the surety obtain SBA's approval before issuing a bond greater than \$2 million during the initial 9 months the surety is first in the PSB program.

SBA identified that 61, or 24%, of all currently T-listed surety companies have limits below SBA's required threshold to participate in the PSB program. Some companies in the surety industry utilize affiliate entities to manage different portfolio segments, including the portfolio segment SBA assists, termed "small specialty." Given the typical bond size need of small and emerging businesses, some surety bond companies utilize affiliates with low T-listing limits to support small specialty before moving them to surety affiliates with higher T-listing amounts.

The T-listing is based on a surety's ability to pay losses via reserve funds and is not an indicator of surety performance. By excluding some of these affiliates via the T-listing limit, the program also potentially reduces access to the program for some small businesses. Removing the regulatory limit will allow greater agility for SBA to adjust the requirement based on inflation and industry practices. This allows the PSB program to support more small surety bond companies. The PSB agreement outlines delegated authority for PSB participation and can be given in amounts that reflect the participating surety's T-listing limit.

SBA also proposes removing: (1) the limit on government-backed bonds as a proportion of their premium income, and (2) the requirement that a PSB surety get approval before issuing a bond greater than \$2 million during the initial 9 months of program participation. SBA could not identify a current benefit to the implementation of these requirements. PSB surety participation as a percent of premium income unduly restricts small business access to the SBG program. Restricting program participation for a surety bond company on this basis potentially forces a participating surety to deny small

business access to strictly due to reaching their premium share limit.

The 9-month delegated authority restriction for new Surety participants does not contain enough time to obtain a program performance assessment of the new participant. SBA could not identify rationale for the restriction. Additionally, the conclusion of a review of program performance for new PSB surety partners between fiscal year 2018 and 2024 did not support the initial 9-month program performance period as an indicator of program performance thereafter. The language will be replaced with SBA maintaining the right to restrict participation to evaluate the Surety's program performance. This language is in line with 13 CFR 115.18, pertaining to improper practices within the program. These proposals are anticipated to increase the pool of PSB sureties, which will expand the SBA surety agency base and increase bond opportunities for small businesses.

Current SBA regulations 13 CFR 115.11, 13 CFR 115.60(a)(4), and 13 CFR 115.65(b) require all Surety partners to oversee its underwriting function with surety staff and for PSB sureties to underwrite using employees of the surety and in "the same manner and with the same staff" for SBA bonds as they do for their non-SBA bonds. During listening sessions, meetings, and other engagements with the surety bond industry, SBA found it is common practice in the industry to delegate bond writing authority to staff of an affiliated surety and vetted surety bond agencies. Agents in these agencies are vetted for their knowledge and performance in the industry in relation to their portfolio with the surety bond company delegating such authority. Agencies with this authority are referred to as "Managing General Agencies" (MGAs) and "Managing General Underwriters" (MGUs). With this authority, these entities act on behalf of the surety by performing the underwriting of a bond application and issuing the surety bond. Oftentimes, MGAs and MGUs handle large books of business that are too cumbersome or time-consuming for surety bond companies to manage.

Sureties have stated to SBA that surety bonds to small businesses who have trouble being approved for a bond fit this category of business. The Prior Approval program does not have staff restrictions on underwriting by participating surety bond companies. A comparative review of program performance for fiscal years 2014–2021 by known MGAs and MGUs in the Prior Approval program shows that performance by these entities has been on par with the rest of the program

during the same period. SBA will refer to MGAs and MGUs delegated by SBA-partnered surety bond companies as partner-affiliated entities. SBA proposes to allow PSB sureties to use affiliate staff for underwriting and allow the use of partner-affiliated entities. This change will allow surety partners to write more bonds with fewer resources and align SBA regulation with industry practice. Overall, SBA expects this to increase the number of surety partners and bond opportunities for small businesses.

VII. Revisions to the Quick Bond Agreement: § 115.30(d)(2)

SBA's Quick Bond agreement (Quick Bond) is for small contract amounts. The program aligns with the surety bond industry practice of providing reduced and expedient underwriting for surety bonds with limited scope and size in private industry programs collectively referred to as fast-track programs. SBA's Quick Bond option removes bonding barriers for start-ups and other emerging small businesses by reducing qualification to small business and contract eligibility for SBA assistance. Currently, 13 CFR 115.30(d)(2) outlines Quick Bond limitations. In surety bond industry listening sessions, meetings, and day-to-day program application review, SBA has found many industries (e.g., plumbing, HVAC, drywall, painting, roofing, etc.) often have contracts with clauses that don't fit the program's regulatory limitations.

Additionally, SBA historically lags behind industry adjustments to similar programs outside SBA in regard to limits on contract size, liquidated damages, and job duration. During engagements, surety industry professionals have advised SBA that the industry supports more expansive small business needs within fast-track programs outside SBA and that not all emerging small business contractors are able to regularly maintain financial statements. When reviewing program performance, SBA found some industries may experience elevated risk of failure due to external impacts. In these events, applications from small businesses in the impacted industry would benefit from regular application underwriting even when qualifying for SBA's Quick Bond application type. Due to Quick Bond limitations being part of regulation, SBA cannot readily adapt to economic changes and emerging program risks. SBA proposes removing the regulatory limitations for Quick Bond application types. This will enable SBA to better align the program

with industry practices and better support small businesses.

VIII. Technical Corrections: § 115.11, § 115.12(f), § 115.18(c), § 115.30(b) and (c), § 115.31(d), and § 115.35(a)(1)(iv)

SBA proposes making several technical corrections to clarify and correct current regulations. 13 CFR 115.11 states the T-listing limit is for bonds in connection with Federal procurement contracts. However, U.S. Treasury clarified to SBA that the requirement is in connection with all bonds issued by the surety bond company should the company be Treasury listed. SBA proposes removing reference to Federal procurement contracts to align with U.S. Treasury.

13 CFR 115.12(f) explains procedures for SBA-approved transfers and sales of files and accounts by a surety. SBA proposes adding language that clarifies sale of an entire SBA-partnered business operation without prior-written approval by SBA voids SBA's guarantee and claims reimbursement agreements to that division unless the sale is to an existing SBA partner.

13 CFR 115.18(c) references SBA form 912. SBA's form 994 was previously modified to capture the same information as SBA form 912 and the program stopped actively collecting SBA form 912. SBG program currently relies solely on SBA form 994 for the information previously collected on SBA form 912. SBA proposes replacing reference to SBA form 912 with reference to individual certification by applicant owners.

13 CFR 115.30(b) and (c) refer to SBA staff as SBA officers. This will be changed to SBA staff to be consistent with references to employees throughout the rest of the regulations.

13 CFR 115.31(d) includes an example calculation for determining a reduced guarantee percent on a contract over the statutory limit of the program. For consistency with other examples as guidance, this example will be removed from the regulations.

13 CFR 115.35(a)(1)(iv) states a surety must notify SBA when it receives any adverse information concerning a Principal's financial condition or possible inability to complete the project or pay laborers or suppliers. In practice, SBA verifies this information when submitted to SBA. Additionally, these conditions for notification are collectively defined by SBA in § 115.10 as "imminent breach" when the conditions, unless remedied by the Surety, make a default under the bond appear to be inevitable. SBA proposes clarifying this requirement by stating the surety must notify SBA when it

verifies any adverse information concerning imminent breach by the Principal.

IX. Section-by-Section Analysis

A. § 115.11

Remove the requirement that physical applications be submitted and allow Surety Partners to email application packages. Remove the requirement that a Surety's salaried staff must oversee its underwriting function. Remove language stating that T-listing limit for bonds is in connection with Federal procurement contracts.

B. § 115.12(f)

Add clarifying language that the sale of an entire business operation partnered with SBA occurs without prior written approval of SBA, it will void SBA's guarantee and claims reimbursement agreements to that division unless the sale is to an existing SBA partner.

C. § 115.18(c)

Remove reference to SBA Form 912 Statement of Personal History as it is no longer in use.

D. § 115.19

Add language to 13 CFR 115.19(f)(1)(i) to clarify that timeliness for a bonding line is determined by § 133(d).

E. § 115.22

Change time frame for contract completion reporting from quarterly to requiring the Surety to submit to SBA notification of successfully completed contracts within the time frame set by SBA.

F. § 115.30

Remove the signature requirement in § 115.30(b) for each application and replace with a master certification. Change § 115.30 (d) to require a new Prior Approval Agreement between SBA and the Prior Approval Surety Partner which will contain a master certification for all the applications that follow.

Revise § 115.30(b) and (c) by removing references to "authorized SBA officer" and replace with the SBA's Director, Office of Surety Guarantees (D/SG) or their designee.

Revise Quick Bond Agreement requirements in paragraph (d)(2) by removing the restriction that a Quick Bond Agreement can only be used for contract amounts under \$500,000 at the time of application and remove the regulatory exclusions in paragraph (d)(ii).

G. § 115.31

Remove from paragraph (d) the example calculation for when a contract amount increases above the statutory limit.

H. § 115.32

Revise paragraph (b) to delete the requirement that the SBA's charge to Principal be remitted with the application, and replace that with a requirement that the Prior Approval Surety is responsible to collect the guarantee fee from the Principal and remit to SBA within 60 calendar days of the approval of the *Surety Bond Guarantee Agreement* (SBA form 990).

Revise paragraph (d)(1) by changing the cross reference in paragraph (d)(1) for the payment of the increased Principal's guarantee fee from in accordance with (d)(2) to (b). Revise (d)(2) by deleting the provision requiring payment for an increase in the Principal's fee from resulting from an increase in the contract amount. Revise paragraph (d)(3) by detecting that refunds fees from bond increases will go from SBA to the Principal and replace it with the refund will be returned to the Surety who collected the payment.

I. § 115.33(b)(1)

Revise the duration of a Bonding Line from 1 year to the fiscal year of approval.

J. § 115.35(a)(1)(iv)

Revise when a Surety must notify SBA about adverse information. Change the reporting threshold from when the Surety has adverse information concerning a Principal's financial condition to when the Surety has verified imminent breach by the Principal.

K. § 115.60

Remove underwriting limitation of \$6,500,000 in paragraph (a)(1) and replace with a minimum threshold set by SBA for the applicant Surety or an SBA-partnered affiliate. Delete paragraph (a)(3). Revise paragraph (a)(4) by adding employees of a Surety's affiliates and SBA approved affiliated entities as those who are allowed to do underwriting on behalf of the Surety. Revise paragraph (b) by removing the 9-month trial period before a Surety can be admitted into the PSB program and replace with a time frame set by SBA.

L. § 115.65(b)

Revise by eliminating the restriction that the approval, execution, and administration of SBA Bonds by a PSB Surety must be handled by the same staff as the Surety's outside activity and

replace with a cross reference to individuals outlined in § 115.60(a)(4). Section 115.60(a)(4) is also being revised by adding employees of a Surety's affiliates and SBA approved affiliated entities as those who are allowed to do underwriting on behalf of the Surety.

M. § 115.66

Revise § 115.66 which relates to fee collection by PSB Sureties to mirror the requirements for Prior Approval Sureties in § 115.32. Revisions include deleting existing text and adding subsections (a), (b), and (c). Subsection (a) describes the Surety's Premium. Subsection (b) describes the SBA charge to the Principal. Subsection (c) describes the SBA charge to the Surety. None of these are new charges or fees.

X. Request for Comments

SBA invites public comments on any part of the proposed rule.

XI. Compliance the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders Executive Orders 12866, 13563, and 14094, Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis,” which shall “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This is expected to be a time saving rule making so it is not anticipated to have a significant economic impact. As of fiscal year end 2023, the Program had 9,265 surety bond guarantees to 32 active surety companies (which may or may not be small businesses) that would be impacted by this rulemaking. Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comments from members of the public who believe this rule will have a significant economic impact on a substantial number of small entities.

Executive Orders 12866, 13563, and 14094

Executive Order 12866, Regulatory Planning and Review, as amended by Executive Order 14094, Modernizing Regulatory Review, requires agencies to provide a Regulatory Impact Analysis assessing costs and benefits and addressing available alternatives for any “significant regulatory action.” The Office of Management and Budget has determined that this rule does not constitute a “significant regulatory action” as defined in Executive Order 12866.

Executive Order 13563, Improving Regulation and Regulatory Review, reaffirms the principles of Executive Order 12866 and requires agencies to adopt regulations through a process that involves public participation and, to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this rule in a manner consistent with these requirements. In addition, Executive Order 13563 requires agencies to assess the benefits and costs of any regulations and address available alternatives to direct regulation.

As described above, this proposed rule could affect small entities that participate as sureties in SBA's Surety Bond Guarantee program and small entities seeking assistance through the program. SBA's proposed rule will reduce time in two significant ways.

First, All Prior Approval participants surveyed agreed that having a Surety Partner participation agreement for the Prior Approval program would greatly benefit program participants by removing SBA's requirement to individually certify every application submission. SBA proposes changes to 13 CFR 115.30(d) to require a new Prior Approval Agreement between SBA and the Prior Approval Surety Partner which will contain a master certification for all the applications to follow. This removes the need for each application to be individually certified. SBA estimates the new agreements would reduce application time burden on program participants by 557 hours, or \$15,818 according to fiscal year 2023 program activity.

The proposed change is estimated to save each impacted program participant an average of 3 minutes per response, or a total of 557 total burden hours for all small businesses. To quantify the value of time saved, the SBA relies on BLS wage data and assumes that the representative impacted occupation would be “insurance sales agents”. The

median wage from 2023 for this occupation was \$28.40. Using the program data from FY2023, the estimated total burden hours saved for program participants per year is approximately 557. The total annual savings that the SBA estimates for program participants as a result of the proposed changes comes to \$15,818 (\$28*557), on average.

Second, SBA proposes shifting how small business contractor remit fees to SBA from the small businesses itself to being remitted by the Surety Partners. This enables the industry to align their SBA contractor fee collection procedures with industry fee collection practices and reduce the amount of uncollectible fees with small businesses. As explained on page 6 of this text, SBA estimates the change would reduce application time burden on program participants and small businesses by 568 hours, or \$14,495 according to fiscal year 2023 program activity.

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. This rule does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined this rulemaking 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, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA will update the affected information collections and go through the typical Paperwork Reduction Act process.

List of Subjects in 13 CFR Part 115

Administrative practice and procedure, Bonding, Surety bonds, Surety, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 115 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 636i, 687b, 687c, 694a, and 694b note.

■ 2. Revise § 115.11 to read as follows:

§ 115.11 Applying to participate in the Surety Bond Guarantee Program.

Sureties interested in participating as Prior Approval Sureties or PSB Sureties should apply by email or in writing to the D/SG at 409 3rd Street SW, Washington, DC 20416. OSG will determine the eligibility of the applicant considering its standards and procedures for underwriting, administration, claims and recovery. Each applicant must be a corporation listed by the U.S. Treasury as eligible to issue bonds. At a minimum, each applicant must have salaried staff that is employed directly (not an agent or other individual or entity under contract with the applicant) to perform all claims and recovery functions other than specialized services the costs of which may be reimbursable under 13 CFR 115.16(e)(1). Final settlement authority for claims and recovery must be vested only in the applicant's salaried claims staff. The applicant must continue to comply with SBA's standards and procedures for underwriting, administration, claims, recovery, and staffing requirements while participating in SBA's Surety Bond Guarantee Program.

■ 3. Amend § 115.12 by revising paragraph (f) to read as follows:

§ 115.12 General program policies and provisions.

* * * * *

(f) *Transfers or sales by Surety.* Sureties must not sell or otherwise transfer their files or accounts, whether before or after a default by the Principal has occurred, without the prior written approval of SBA. A violation of this provision is grounds for termination from participation in the program. This provision does not apply to the sale of an entire business division, subsidiary or operation of the Surety. If the sale of an entire business division partnered with SBA occurs without prior written approval of SBA, it will void SBA's guarantee and claims reimbursement agreements to that division unless the sale is to an existing SBA partner.

■ 4. Amend § 115.18 by revising paragraph (c) to read as follows:

§ 115.18 Refusal to issue further guarantees; suspension and termination of PSB status.

* * * * *

(c) *Notification requirement.* The Prior Approval or PSB Surety must promptly notify SBA of the occurrence of any event in paragraphs (b) (1) through (5) of this section, or if any of the Persons described in paragraph (b) of this section does not, or ceases to, qualify as a Surety. SBA may require submission of individual certifications from any of these Persons.

* * * * *

■ 5. Amend § 115.19 by revising paragraphs (f)(1) and (g) to read as follows:

§ 115.19 Denial of liability.

* * * * *

(f) * * *

(1) Either:

(i) The bond was Executed prior to the date of SBA's guarantee, or in the case of a bonding line commitment under § 115.33 the bonding line was not established in accordance with § 115.33(d); or

(ii) The bond was Executed (or approved, if the Surety is legally bound by such approval) after the work under the Contract had begun, unless SBA approves a "Surety Bond Guarantee Agreement Addendum" (SBA Form 991) after receiving all of the following from the Surety:

(A) Satisfactory evidence, including a certified copy of the Contract (or a sworn affidavit from the Principal), showing that the bond requirement was contained in the original Contract, or other documentation satisfactory to SBA, showing why a bond was not previously obtained and is now being required;

(B) Certification by the Principal that all taxes and labor costs are current, and listing all suppliers and subcontractors, indicating that they are all paid to date, and attaching a waiver of lien from each; or an explanation satisfactory to SBA why such documentation cannot be produced; and

(C) Certification by the Obligee that all payments due under the Contract to date have been made and that the job has been satisfactorily completed to date.

* * * * *

(g) *Delinquent fees.* The Surety has not remitted to SBA payment for the full amount of all guarantee fees within the time period required under § 115.32(b) and (c) for Prior Approval Sureties, or § 115.66 for PSB Sureties. SBA may reinstate the guarantee upon showing that the contract is not in default and that a valid reason exists why a timely remittance or payment was not made.

* * * * *

■ 6. Revise § 115.22 to read as follows:

§ 115.22 Closeout Reporting.

The Surety must submit to SBA notification of successfully completed contracts and claims files within the timeframe set by SBA, and in the manner as prescribed by SBA.

■ 7. Amend § 115.30 by revising paragraphs (b) and (c), the introductory text of paragraph (d), and the introductory text of paragraph (d)(2) to read as follows:

§ 115.30 Submission of Surety's guarantee application.

* * * * *

(b) SBA's approval or decline of a guarantee application is made in writing by the D/SG or their designee. SBA may provide telephone notice before the Prior Approval Surety receives SBA's guarantee approval form if the guarantee has already received approval by SBA staff with delegated authority. In the event of a conflict between the telephone notice and the written form, the written form controls.

(c) A Prior Approval Surety may request reconsideration of a decline from the D/SG or their designee who made the decision. If the decision on reconsideration is negative, the Surety may appeal to an individual designated by the D/SG. If the decision is again adverse, the Surety may appeal to the D/SG, who will make the final decision.

(d) Prior Approval Agreement. To apply for a bond guarantee, a Prior Approval Surety must have an active Prior Approval Agreement, submit a Surety Bond Guarantee Agreement (SBA Form 990), and select one of the following application types:

* * * * *

(2) *Quick Bond Agreement.* Except as determined by SBA, a Prior Approval Surety may complete and submit an SBA Form 990 indicating a Quick Bond Agreement application type for each Bid Bond or Final Bond. This form must be approved by SBA prior to the Surety's Execution of the bond. Eligibility parameters of the Quick Bond application type are determined by SBA. The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

* * * * *

§ 115.31 [Amended]

■ 8. In § 115.31, amend paragraph (d) by removing the last sentence.

■ 9. Amend § 115.32 by revising paragraphs (b) and (d) to read as follows:

§ 115.32 Fees and Premiums.

* * * * *

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid

Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee equal to a certain percentage of the Contract amount. The Surety is responsible for collecting the Principal's guarantee fee due on each guaranteed bond (other than a Bid Bond under 13 CFR 115.19(g)) and remitting payment within 60 calendar days after SBA's approval of the *Surety Bond Guarantee Agreement* (SBA form 990). The percentage is determined by SBA and is published in Notices in the **Federal Register** from time to time. The Principal's fee is rounded to the nearest dollar. See paragraph (d) of this section for additional requirements when the Contract amount changes.

(d) *Contract or bond increases/decreases*—(1) *Notification and approval.* The Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% or \$500,000 of the original contract or bond amount, whichever is less, as soon as the Surety acquires knowledge of the change. Whenever the original bond amount increases as a result of a single change order of at least 25% or \$500,000 of the original contract or bond amount, whichever is less, the prior written approval of such increase by SBA is required on a supplemental Prior Approval Agreement and is conditioned upon payment by the Surety of the increase in the Principal's guarantee fee as set forth in paragraph (b) of this section. In notifying SBA of any increase or decrease in the Contract or bond amount, the Prior Approval Surety must use SBA Form 990 and select the application type that it used in applying for the original bond guarantee.

(2) *Increases; fees.* The payment for the increase in the Principal's guarantee fee is computed on the increase in the Contract amount. . If the increase in the Principal's fee is less than \$250, no payment is due until the total amount of increases in the Principal's fee equals or exceeds \$250. The Surety's payment of the increase in the Surety's guarantee fee, computed on the increase in the bond Premium, must be submitted to SBA within 60 calendar days of SBA's approval of the Prior Approval Agreement, unless the amount of such increased guarantee fee is less than \$250. When the total amount of increase in the guarantee fee equals or exceeds \$250, the Surety must remit the fee within 60 calendar days.

(3) *Decreases; refunds.* Whenever SBA is notified of a decrease in the Contract or bond amount, SBA will refund a proportionate amount of the Principal's

guarantee fee and rebate to the Surety a proportionate amount of SBA's Premium share in the ordinary course of business. If the amount to be refunded or rebated is less than \$250, such refund or rebate will not be made until the amounts to be refunded or rebated, respectively, aggregate at least \$250. Upon receipt of the refund, the Surety must promptly pay a proportionate amount of its Premium to the Principal.

■ 10. Amend § 115.33 by revising paragraph (b)(1) to read as follows:

§ 115.33 Surety bonding line.

* * * * *

(b) * * *

(1) The term of the bonding line, not to exceed the fiscal year of approval subject to renewal in writing;

* * * * *

■ 11. Amend § 115.35 by revising paragraph (a)(1)(iv) to read as follows:

§ 115.35 Claims for reimbursement of Losses.

(a) * * *

(1) * * *

(iv) The Surety has verified any adverse information concerning imminent breach by the Principal.

* * * * *

■ 12. Revise § 115.60 to read as follows:

§ 115.60 Selection and admission of PSB Sureties.

(a) *Selection of PSB Sureties.* SBA's selection of PSB Sureties will be guided by, but not limited to, these factors:

(1) An underwriting limitation on the U.S. Treasury Department list of acceptable sureties of at least the minimum threshold set by SBA for the applicant Surety or an SBA-partnered affiliate;

(2) An agreement that the Surety will neither charge a bond premium in excess of that authorized by the appropriate State insurance department, nor impose any non-premium fee unless such fee is permitted by applicable State law and approved by SBA.

(3) The vesting of underwriting authority for SBA guaranteed bonds only in employees of the Surety, its affiliates, or partner-affiliated entities approved by SBA;

(4) The rating or ranking designations assigned to the Surety by recognized authority.

(b) *Admission of PSB Sureties.* A Surety admitted to the PSB program must execute a PSB Agreement before approving SBA guaranteed bonds. No SBA guarantee attaches to bonds approved before the D/SG or designee has countersigned the Agreement. SBA may in its discretion limit participation of the Surety for a period set by SBA to

allow SBA to evaluate the Surety's performance.

■ 13. Amend § 115.65 by revising paragraph (b) to read as follows:

§ 115.65 General PSB procedures.

* * * * *

(b) *Usual staff and procedures.* The approval, Execution and administration by a PSB Surety of SBA guaranteed bonds must be handled in the same manner and with the same individuals outlined in § 115.60(a)(4). The Surety must request job status reports from Obligees in accordance with its own procedures.

* * * * *

■ 14. Revise § 115.66 to read as follows:

§ 115.66 Fees.

(a) *Surety's Premium.* A PSB Surety must not charge a Principal an amount greater than that authorized by the appropriate insurance department. The Surety must not require the Principal to purchase casualty or other insurance or any other services from the Surety or any Affiliate or agent of the Surety. The Surety must not charge non-Premium fees to a Principal unless the Surety performs other services for the Principal, the additional fee is permitted by State law, and the Principal agrees to the fee.

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee equal to a certain percentage of the Contract amount. The Surety is responsible for collecting the Principal's guarantee fee due on each guaranteed bond (other than a Bid Bond) and remitting payment within 60 calendar days after submission to SBA. The percentage is determined by SBA and is published in Notices in the **Federal Register** from time to time. The Principal's fee is rounded to the nearest dollar. See § 115.67 for additional requirements when the Contract amount changes.

(c) *SBA charge to Surety.* SBA does not charge Sureties application or Bid Bond guarantee fees. Subject to § 115.18(a)(4), the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond) within 60 calendar days after the bordereau submission of the related Final Bond. The fee is a certain percentage of the bond premium determined by SBA and published in Notices in the **Federal Register** from time to time. The fee is rounded to the nearest dollar. SBA does not receive any portion of a Surety's non-premium charges. See § 115.67 for

additional requirements when the Contract or bond amount changes.

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2024-26831 Filed 11-18-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-2425; Project Identifier MCAI-2023-00967-R]

RIN 2120-AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.a. Model A109C, A109E, A109S, and AW109SP helicopters. This proposed AD was prompted by a report of a quality escape on a batch of main rotor blades (MRBs). This proposed AD would require repetitively tap inspecting certain MRBs, replacing those MRBs, and prohibit installing those MRBs, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by January 3, 2025.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2024-2425; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory

continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADS@easa.europa.eu*; website: *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at *regulations.gov* under Docket No. FAA-2024-2425.

Other Related Material: For Leonardo material identified in this proposed AD, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; phone: (+39) 0331-225074; fax: (+39) 0331-229046; or website: *customerportal.leonardocompany.com/en-US/*.

FOR FURTHER INFORMATION CONTACT:

Frank Huynh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (404) 983-5288; email: *Frank.Huynh@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2024-2425; Project Identifier MCAI-2023-00967-R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Frank Huynh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (404) 983-5288; email: *Frank.Huynh@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023-0159, dated August 10, 2023 (EASA AD 2023-0159) (also referred to as the MCAI), to correct an unsafe condition on all Leonardo S.p.a. Model A109C, A109E, A109S, and AW109SP helicopters. The MCAI states that a report was received of a quality escape on a batch of MRBs, where the tip cap had been replaced by following a procedure and using tools not in accordance with Leonardo Technical Publications. The FAA is proposing this AD to prevent premature debonding of an MRB tip cap, which could lead to the loss of the MRB tip cap in flight, possibly resulting in loss of control of, and damage to, the helicopter, and injury to occupants.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2024-2425.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2023-0159 requires repetitively tap inspecting certain part-numbered and serial-numbered MRBs for deficiency (debonding) of the tip cap, and depending on the results, replacing the MRB. For affected MRBs that are not replaced as a result of a tap inspection, EASA AD 2023-0159 requires replacing those MRBs within a longer compliance time. EASA AD 2023-0159 also prohibits installing those MRBs on any helicopter.

This material is reasonably available because the interested parties have