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SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245-AI06

Surety Bond Guarantee Program: Streamlining and Modernizing

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule makes several changes to the U.S. Small Business Administration (SBA) Surety Bond Guarantee (SBG) program regulations. The rule reduces the burden on participating surety companies for submission and retention of documents. The rule also corrects conflicting provisions, as well as revising the obsolete Preferred Surety admissions requirements and the Quarterly Contract Completion Report.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kevin Valdes, Office of Surety Guarantees, U.S. Small Business Administration at (202) 816-0137 or kevin.valdes@sba.gov. The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background Information

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 procedures and regulations to improve customer experience and better enable modernization efforts within the SBG program. SBA published a Notice of Proposed Rulemaking in the Federal Register on November 19, 2024 (89 FR 91284).

II. Summary of Comments Received

On January 21, 2025, the notice of proposed rulemaking comment period ended. SBA received 18 comments to the notice of proposed rulemaking, of which 2 were beyond the scope of the notice for proposed rulemaking (NPRM) and 1 strictly addressed a grammatical concern. Of the 15 unique comments received, 2 were national trade associations, 3 were surety companies and agencies, 5 were individual surety professionals, and 5 were anonymous individuals. The 2 comments beyond the scope of the NPRM were from anonymous individuals, as well as the 1 grammatical comment.

Public comments received regarding the proposed changes will be addressed in the Section-by-Section Analysis. Of the 15 comments received in direct response to the proposals, 12 entirely supported, 2 partially supported, and 1 opposed the changes set forth in the notice of proposed rulemaking. In addition to comments on these regulations, there were also comments requesting that SBA implement policies and procedures on the

guarantee percentage to women-owned small businesses (WOSBs), expansion of the Quick Bond application, support for concessionaire bonds, and expansion of SBA's role in the surety's underwriting of applications to improve opportunity and efficiencies across the Surety Bond Guarantee program.

III. Section-by-Section Analysis and Response to Comments

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

Sections 115.11, 115.30(b), and 115.30(d) address application submission parameters and signature requirements in the Prior Approval program. Current SBA regulation 13 CFR 115.11 requires prospective Surety Partners to submit partnership applications by mail. Current SBA regulation 13 CFR 115.30(b) requires signature on the approval of all Prior Approval program applications. Current SBA regulation 13 CFR 115.30(d) outlines requirements for application submission to SBA in the Prior Approval program.

This final rule adds the option to email Surety Partner application packages. Additionally, the rule adds a requirement for a Prior Approval Agreement between SBA and the Prior Approval Surety Partner that will contain a master certification for all the applications to follow and changes language from "signed" documents to "executed" documents. The agreement's certification effectively removes the need for each application to be individually signed and certified by both parties. SBA estimates the new agreements will reduce application annual time burden on program participants and SBA by 692 hours, or $32,773 according to fiscal year 2024 program activity. These changes will modernize program regulations to align with current business practices and improve the customer experience of the program in alignment with agency priority goals.

In a survey, 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 sign and certify every

application submission. Four commenters on the proposed rule expressed support for this change. One of the supporting commenters expressed concern about whether the change will impact SBA's responsibility of first-time applicant review and underwriting to establish bonding parameters. To clarify, the rule change does not change the responsibility of the Surety to review and underwrite all small business bond needs prior to SBG program submission. It also does not remove responsibility of the Surety to verify information submitted by the Principal is true, correct, and complete to the best of their knowledge. The rule change does not change SBA's review and underwriting of Prior Approval applications for eligibility and suitability in the program; however, SBA does not currently, and will not, set the Surety's bonding parameters for the small business. Sureties participating in the Prior Approval program currently, and will continue to, certify that an applicant's information is true, correct, and complete to the best of their knowledge, and that the applicant appears to have the financial management and technical abilities to successfully complete the subject contract but falls below normal underwriting standards of the Surety. All applications in the program must be submitted after the Surety's bond approval conditioned on SBA's support. No other commenters expressed concern or opposition.

B. Streamline fee collection process: § 115.19(g), § 115.32(b) and (d), § 115.66, § 115.67, and § 115.14(a)(5)

Sections 115.19(g), 115.32(b), 115.32(d), 115.66 and 115.67 address fee collection requirements, while section 115.14(a)(5) addresses the consequence to the Principal if their fee is not paid. Current SBA regulation 13 CFR 115.19(g) establishes SBA's right to deny liability when a Surety does not remit the Principal's fee payment or Surety's fee payment within the timeliness requirements set by SBA. Current SBA regulation 13 CFR 115.32(b) requires the Principal's fee payment be submitted with the application, establishing that the fee must be received by SBA prior to SBA's final approval of the

application. Current SBA regulation 13 CFR 115.32(d) requires a Prior Approval Surety remit payment of the Principal's guarantee fee at the time of submission for an increase to an existing SBA guaranteed bond when it meets both SBA's increase threshold of 25% or $500,000 (whichever is less) and SBA's fee threshold ($250) for fee remittance. Current SBA regulation 13 CFR 115.66 requires the Principal's fee payment be submitted with the application, establishing that the fee must be received by SBA at the time of the Surety's guarantee submission to SBA. Current SBA regulation 13 CFR 115.67 requires a PSB Surety remit payment of the Principal's guarantee fee at the time of submission for an increase to an existing SBA guaranteed bond when it meets both SBA's increase threshold of 25% or $500,000 (whichever is less) and SBA's fee threshold ($250) for fee remittance. Lastly, current SBA regulation 13 CFR 115.14(a)(5) addresses the failure of the Principal to pay their required fee and the loss of eligibility for further SBA bond guarantees.

This final rule changes the timeliness requirement of all fees to 60 calendar days, in alignment with current surety fee collection timeliness requirements. The final rule also simplifies regulatory language to clarify the current responsibility of Sureties to ensure all fees payments, including Principal fee payments, are successfully received by SBA. By making these changes, SBA better streamlines the final bond application approval process by not stalling approvals for fee payments. Additionally, the changes enable SBA to accept bulk payments of Principal fees from Sureties. The changes allow Sureties to develop their own fee collection and remittance procedures, reducing burden and better integrating program workflows with their non-SBA processes. SBA estimates the new agreements will reduce application annual time burden on program participants and SBA by 993 hours, or $39,012 according to fiscal year 2024 program activity.

In a survey, several surety professional participants 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.

Seven commenters on the proposed rule expressed support for this change. Six of these commenters stated the change will save the industry time and money through reduced procedural burdens. One of these commenters stated having the option to provide subsequent SBA fee billing aligns the program with industry standards. One commenter stated the change allows small businesses to receive bond costs reimbursement from project owners prior to payment of the fee, reducing cash reserve impacts to the small business. Three commenters on the proposed rule expressed opposition to this change. All three commenters opposed the change on the basis that SBA requiring Sureties to collect fees instead of SBA could adversely impact the program by increasing the program's bad debt, confusing small businesses on who ultimately receives the payment, and reducing program participation by the surety industry due to concern for responsibility of the fees. SBA acknowledges these concerns and corrected language to reflect that this change is not requiring Sureties to directly collect the Principal's fee. The rule revisions only change the timeliness requirement of Principal fees from at the time of SBA submission to within 60 calendar days from approval in SBA's online system and clarify existing responsibility language in the regulations. The responsibility of Sureties to the federal government to

ensure the timely remittance of Principal fee payments is a current requirement of participation in the SBG program. Per the current Section 115.19(g) mentioned above, failure of Principal fee remittance by the Surety is already grounds for denial of liability by SBA. Methods of ensuring successful Principal fee remittance currently used by Sureties partnered with the SBG program include direct oversight of successful payment by the small business, direct payment by the Surety, and indirect oversight (by surety agencies) of successful payment by the small business. However, the current responsibility of ensuring fee payment ultimately remains with the Surety. Language simplifications on this subject do not make any changes to the current responsibility of Sureties participating in the program. The change to timeliness requirements of fee remittance enables Sureties greater flexibility in management of this responsibility. In enabling SBA to allow bulk payments in addition to the current method of individual payments through U.S. Treasury's pay.gov website, Sureties participating in the program will have expanded options for compliance with fee remittance requirements. SBA is not requiring direct Principal fee collection by Sureties. A Surety's procedure for compliance with ensuring successful Principal fee remittance is a program management concern outside SBA and is not restricted by this rule change beyond remittance timeliness. One commenter provided a neutral response, identifying a grammatical error in the proposed rule. The grammatical error was accepted and is corrected in this final rule.

C. Quarterly Contract Completion Report: § 115.22

Section 115.22 requires Sureties with active SBA bond guarantees to submit a quarterly contract completion report (QCCR) detailing all contracts for guaranteed bonds that were completed during the most recently completed quarter. Current SBA regulation 13 CFR 115.22 requires the QCCR report be submitted within 45 calendar days of each fiscal year quarter's end and outlines the information to be provided in the report. This final rule moves the reporting parameters and timing from regulation to a standard operating

procedure (SOP). SBA managing procedures for reporting in an SOP will provide greater flexibility for bond guarantee closeout management in the program and procedural streamlining. SBA estimates the new agreements will reduce program management annual time burden on program participants and SBA by 26 hours, or $2,463 according to fiscal year 2024 program activity.

At the time the QCCR was originally implemented, the surety 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 2024, nearly 45% 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. Two commenters on the proposed rule expressed support for this change. None expressed opposition or concern.

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

Sections 115.19(f)(1)(i) and 115.33(b)(1) address SBA bond guarantees in relation to bond execution and bonding line parameters. Current SBA regulation 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, current SBA regulation 13 CFR 115.19(f)(1)(i) requires bonds be approved by SBA prior to execution.

This final rule reconciles the conflicting language between these two regulations to allow SBA acceptance of executed bonds under an SBA bonding line. The rule also clarifies that a bonding line expires at the end of the fiscal year in which it was approved. These changes will resolve conflicts in regulatory language and clarify that SBA bonding lines cannot extend past the originated fiscal year per allocated funding restrictions of the

program. Two commenters on the proposed rule expressed support for this change. None expressed opposition or concern.

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

Sections 115.11, 115.60, and 115.65(b) address requirements to participate in SBA's PSB program. Current SBA regulation 13 CFR 115.60 requires PSB-partnered Sureties maintain an underwriting limitation of $6.5 million with the U.S. Treasury Department's Circular 570 list, its premium income from federally-guaranteed contract bonds not exceed one quarter of its total contract bond premium income, and its underwriting authority of SBA-guaranteed bonds only be vested in its employees. Current SBA regulation 13 CFR 115.65(b) requires PSB-partnered Sureties handle SBA guaranteed bonds in the same manner and with the same staff as the Surety's activity outside the PSB program.

This final rule revises SBA's selection and admission regulations for Sureties participating in the PSB program by moving the regulatory requirements for a minimum underwriting limit on U.S. Treasury's 570 Circular and the initial participation limits to an SOP. It also removes the premium income limitation of the program and expands vesting of underwriting for SBA-guaranteed bonds to a Surety's employees, its affiliates, or its PSB-authorized agencies. These changes enable SBA to approve participation in the PSB program for the size-limited Affiliates of larger Sureties and small regional Sureties, and exercise more flexibility when assessing the portfolio management structure of Sureties applying to the program. 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. Overall, SBA expects this to increase the number of surety partners and bond opportunities for small businesses.

Seven commenters on the proposed rule expressed support for this change. Five of

these commenters stated the change will streamline program participation and decrease program burden by allowing PSB-authorized agencies to underwrite SBA-guaranteed bonds in the PSB program. No commenters expressed concern or opposition. 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. The agents in vetted surety bond agencies are vetted for their underwriting 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 portfolios of business that normal underwriting practices make too cumbersome or time-consuming for surety bond companies to manage.

The Prior Approval program does not have staff restrictions on underwriting by participating surety bond companies. In FY2024, a comparative review of program performance for fiscal years 2014-2021 by known MGAs and MGUs in the Prior Approval program showed 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 PSB-authorized agencies.

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

Section 115.30(d)(2) outlines requirements for SBA's Quick Bond agreement (Quick Bond). Current SBA regulation 13 CFR 115.30(d)(2) limits contract size to no more than $500,000 on Quick Bonds and excludes applications with previous contract defaults, commencement of work, contract duration over 12 months, liquidated damages over $2,500 per day, work scope involving several types of work, and bonds that can be

issued under a bonding line. This final rule moves these requirements to an SOP. The change enables SBA to more dynamically support small business through Quick Bonds and more flexibility to align with industry fast-track program practices and better support small businesses.

Nine commenters on the proposed rule expressed support for this change. Seven of these commenters stated SBA should increase the limit on contract size. Two of these commenters stated SBA should increase the limit on liquidated damages. While SBA acknowledges these recommendations and is taking them into consideration in review of current Quick Bond parameters, the comments are out of scope of the proposed rule changes. The final rule change improves SBA's ability to reduce its historical lag behind changes to industry standards for programs similar to Quick Bonds, but the final rule does not change the specific requirements. Upon the effective date of this final rule, any change to requirements by SBA will be issued to the public in the form of a Policy Notice by SBA. One of these commenters stated the program should support concessionaire bonds for airport contracts. While SBA acknowledges the recommendation, the comment is out of scope of the proposed rule changes. No commenters expressed concern or opposition.

IV. Technical Corrections: § 115.10, § 115.11, § 115.12(f), § 115.18(c), § 115.30(b) and (c), § 115.31(d), § 115.32(c) and § 115.35.

SBA is making several technical corrections to clarify and correct current regulations. In 13 CFR 115.10, SBA is adding as a definition "SBA Surety Bond Guarantee Program Requirements," revising the definitions of "Prior Approval Surety" and "PSB Agreement," and removing the definition "Prior Approval Agreement." Current SBA regulation 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. This final rule removes reference to Federal procurement contracts to align

with U.S. Treasury underwriting limitation policy. No commenters expressed support, concern, or opposition.

Current SBA regulation 13 CFR 115.12(f) explains procedures for SBA-approved transfers and sales of files and accounts by a surety. This final rule adds 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. No commenters expressed support, concern, or opposition.

Current SBA regulation 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. This final rule replaces reference to SBA form 912 with reference to individual certification by applicant owners. No commenters expressed support, concern, or opposition.

Current SBA regulation 13 CFR 115.30(b) and (c) refer to SBA staff as SBA officers. This final rule changes "SBA officers" to "SBA staff" to be consistent with references to employees throughout the rest of the regulations. No commenters expressed support, concern, or opposition.

Current SBA regulation 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. All other examples are maintained in program SOPs. This final rule removes this example from the regulations to maintain language consistency in 13 CFR 115. No commenters expressed support, concern, or opposition.

Current SBA regulation 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. This final rule clarifies this requirement by stating the surety must notify SBA when it verifies any adverse information concerning imminent breach by the Principal. No commenters expressed support, concern, or opposition.

SBA is making a nomenclature change in 13 CFR 115.32(c) and 115.35(e) changing "Prior Approval Agreement" to "Surety Bond Guarantee Agreement."

V. Section-by-Section Analysis

A. § 115.10

SBA is adding "SBA Surety Bond Guarantee Program Requirements" as a definition. SBA is also revising the definitions of "Prior Approval Surety" and "PSB Agreement." Remove the definition "Prior Approval Agreement."

B. § 115.11

SBA is removing the requirement that physical applications be submitted and allow Surety Partners to email application packages and the requirement that a Surety's salaried staff must oversee its underwriting function. SBA is revising the requirement that a Surety's salaried staff must oversee its claims, recovery, and final settlement functions to now also allow affiliated Sureties participating in the program. SBA is removing language stating that the T-listing limit for bonds is in connection with Federal procurement contracts.

C. § 115.12(f)

SBA is adding 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.

D. § 115.14(a)(5)

SBA is revising language about when the principal loses eligibility for further bond guarantees identifying that the payment of the guarantee fee must be received by SBA. This aligns with the more flexible approach that the Principal fee can be remitted to SBA by either the Principal or the Surety.

E. § 115.18(c)

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

F. § 115.19

SBA is adding language to 13 CFR 115.19(f)(1)(i) to clarify that timeliness for a bonding line is determined by § 33(d).

G. § 115.22

SBA is changing the 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.

H. § 115.30

SBA is removing the signature requirement in § 115.30(b) for each application and replacing it with a master certification. SBA is changing § 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.

SBA is revising § 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.

SBA is revising Quick Bond Agreement requirements in paragraph (d)(2) by removing the restriction that a Quick Bond Agreement can only be used for contract

amounts that do not exceed $500,000 at the time of application and remove the regulatory exclusions in paragraph (d)(ii).

I. § 115.31

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

J. § 115.32

SBA is revising paragraph (b) to delete the requirement that the SBA's charge to Principal be remitted with the application and replace that with remit to SBA within 60 calendar days of the approval of the *Surety Bond Guarantee Agreement* (SBA form 990).

SBA is revising 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).

SBA is also revising (d)(2) for clarity and to change nomenclature from "Prior Approval Agreement" to "Surety Bond Guarantee Agreement.". Revise paragraph (d)(3) by removing that refunded fees from bond decreases will go from SBA to the Principal.

K. Nomenclature change in § 115.32(c) changing "Prior Approval Agreement" to "Surety Bond Guarantee Agreement." § 115.33(b)(1)

SBA is revising the duration of a Bonding Line from 1 year to the fiscal year of approval.

L. § 115.35

SBA is revising 115.35(a)(1)(iv) when a Surety must notify SBA about adverse information. SBA is changing 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.

SBA is making a nomenclature change in § 115.35(e) changing "Prior Approval Agreement" to "Surety Bond Guarantee Agreement."

M. § 115.60

SBA is revising paragraph (a) by adding "conditions and". SBA is removing the underwriting limitation of $6,500,000 in paragraph (a)(1) and replacing it with a minimum threshold set by SBA for the applicant Surety or an SBA-partnered affiliate. SBA is deleting paragraph (a)(3), revising paragraph (a)(4) by adding employees of a Surety's affiliates and PSB-authorized agencies as those who are allowed to do underwriting on behalf of the Surety, and revising paragraph (b) by removing the 9-month trial period before a Surety can be admitted into the PSB program and replacing it with a time frame set by SBA.

N. § 115.65(b)

SBA is revising paragraph (b) by eliminating the restriction that the approval, execution, and administration of SBA Bond Guarantees by a PSB Surety must be handled by the same staff as the Surety's outside activity and replacing it with a cross reference to individuals outlined in § 115.60(a)(4). Section 115.60(a)(3) is also being revised by adding employees of a Surety's affiliates and entities as approved by SBA as those who are allowed to do underwriting on behalf of the Surety and clarifying that authority is limited to approving SBA bond guarantees.

O. § 115.66

SBA is revising § 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.

Compliance Executive Orders 12866, 13563, 12988, 13132, and 14192, the Regulatory Flexibility Act (5 U.S.C. 601-612), the Congressional Review Act (5 U.S.C. 801-808), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and 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 final 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 final 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 final rule 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 changes is $15,818 ($28.40*557), on average.

Second, SBA is extending the timeliness requirement for Surety Partners to successfully remit SBA's contractor fee payment from before the approval of a Surety Bond Guarantee to 60 calendar days after the approval of a Surety Bond Guarantee. This enables the industry flexibility to align SBA contractor fee collection procedures with industry fee collection practices and reduce the amount of uncollectible fees owed by small businesses. Surety Partners can still independently require applicant contractors to pay the fee prior to issuance of the SBA guaranteed surety bond. This change affords greater flexibility by permitting a Surety Partner to obtain SBA's approval before completing remittance of the contractor fee. As explained above, 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 final rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 14192

This final rule is an Executive Order 14192 deregulatory action with an annualized net savings total of approximately $146,300 at a seven percent discount rate, discounted relative to 2024, over a perpetual time horizon.

This rule streamlines application procedures, modernizes forms execution, increases workflow flexibility, enables automation, and reduces regulatory burdens. It replaces the requirement for a separate Surety certification for each Prior Approval guarantee application with a single Surety participation certification, removes applicant guarantee fee payment and verification as a barrier for approval of a bond guarantee, permits electronic submission of Surety Partner participation applications, and reduces paperwork reporting burdens for Surety participants.

This rule also removes obsolete and conflicting provisions and gives SBA greater flexibility to align certain program requirements with surety industry practices and small business needs, including requirements governing Quick Bond applications and Preferred Surety Bond delegated authority.

There are currently 141 Surety participants in the program. Fiscal year 2024 experienced 6,920 submissions requiring Surety participant signatures on SBA forms. Of those submissions, 3,971 required verifications of applicant fee payments prior to application approval finalization. Of the 141 Surety participants, 44 were required to submit a total of 176 quarterly contract completion reports. Removal of signature requirements reduces time costs by 692 hours for Surety participants and SBA staff with an initial cost of 14 hours have all Surety participants complete Surety participation certifications. Removal of manual fee payment requirements and verifications prior to the

approval of a surety bond guarantee reduces time costs by 662 hours with no additional costs due to automation enhancements. Reporting burden reductions from regulatory removal of the quarterly contract completion report reduces time costs by 30 hours for Surety participants and SBA staff with no additional costs. These cost savings are valued at $39.19 per hour—the mean hourly wage for Insurance Sales Agents 2024 Bureau of Labor Statistics ("BLS") data, and at $64.28— the mean hourly wage for SBA staff based on the 2024 Office of Personnel Management ("OPM") data. These calculations include 100 percent more for benefits and overhead adjustment. This produces an estimated total savings per year of approximately 1,384 hours, or $146,300.

The table below displays the costs and savings of this rule over the first two years it is published, with the savings and costs in the second year expected to continue in perpetuity, providing a total annualized net savings of approximately $146,300 at a seven percent discount rate or approximately $393 per Surety participant and $90,885 for SBA.

	Savings	Cost	Net Total $
Year 1	(1,384 hours) ($146,300)	14 hours $724	($145,575)
Year 2+	(1,384 hours) ($146,300)	0 hours $0.00	($146,300)

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency issuing a rulemaking to prepare a final regulatory flexibility analysis that describes the impact of the final rule on small entities. (5 U.S.C. § 604(a)). Section 605 of the RFA allows an agency, in lieu of preparing an analysis, to certify that the rule will not 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 on a substantial number of small entities. 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.

Congressional Review Act

This rule has been determined not to meet the criteria set forth in 5 U.S.C. 804(2). SBA will submit the rule to Congress and the Government Accountability Office consistent with the Congressional Review Act's requirements.

Paperwork Reduction Act

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

List of Subjects in 13 CFR Part 115

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

Accordingly, for the reasons set forth in the preamble, SBA amends 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. Amend § 115.10 as follows:

a. Remove the definition of "Prior Approval Agreement";

b. Revise the definitions of "Prior Approval Surety" and "PSB Agreement"; and

c. Add a definition for "SBA Surety Bond Guarantee Program Requirements" in alphabetical order.

The revisions and addition read as follows:

§ 115.10 Definitions.

* * * * *

Prior Approval Surety means a Surety which must obtain SBA's prior approval on each guarantee and has an active Prior Approval Surety Participation Agreement (SBA Form 900) with SBA.

PSB Agreement means the Preferred Surety Participation Guarantee Agreement (SBA Form 901) entered into between a PSB Surety and SBA.

* * * * *

SBA Surety Bond Guarantee Program Requirements are requirements imposed upon Sureties by statute; SBA and applicable Government-wide regulations including but not limited to this part; any agreement Surety has executed with SBA or to which Surety is subject; SBA Standard Operating Procedures (SOPs); **Federal Register** notices; and

official SBA notices and forms applicable to the SBA Surety Bond Guarantee Program, as such requirements are issued and revised by SBA from time to time.

* * * * *

3. 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, found on www.sba.gov, 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) or by an affiliated Surety participating in the program to perform all claims and recovery functions other than specialized services the costs of which may be reimbursable under § 115.16(e)(1). Final settlement authority for claims and recovery must be vested only in the applicant's salaried claims staff or by claims staff employed directly by an affiliated Surety participating in the program. 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.

4. 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 paragraph (f) is grounds for termination from participation in the program. This paragraph (f) 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.

5. Amend § 115.14 by revising paragraph (a)(5) to read as follows:

§ 115.14 Loss of Principal's eligibility for future assistance and reinstatement of Principal.

(a) * * *

(5) The guarantee fee has not been received by SBA.

* * * * *

6. 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.

* * * * *

7. Amend § 115.19 by revising paragraph (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 SBA has not received 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.

* * * * *

8. 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.

9. 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 determination.* 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) *Reconsideration-appeal of SBA determination.* 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 Surety Participation Agreement*. To apply for a bond guarantee, a Prior Approval Surety must have an active Prior Approval Surety Participation 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]

10. Amend § 115.31 in paragraph (d) by removing the last sentence.

11. 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 successful remittance of the Principal's guarantee fee due on each guaranteed bond (other than a Bid Bond under § 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 Surety Bond Guarantee 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 Surety Bond Guarantee 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.

12. 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;

* * * * *

13. 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.

* * * * *

14. 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 conditions and 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 to approve SBA bond guarantees only in employees of the Surety, its affiliates, or entities as 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.

15. 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)(3). The Surety must request job status reports from Obligees in accordance with its own procedures.

* * * * *

16. 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 successful remittance of 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 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.

§§ 115.32 and 115.35 [Amended]

17. In addition to the amendments set forth above, in 13 CFR part 115, remove the words "Prior Approval Agreement" and add, in their place, the words "Surety Bond Guarantee Agreement" in the following places:

a. Section 115.32(c); and

b. Section 115.35(e).

Kelly Loeffler,

Administrator.

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