

# Proposed Rules

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

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 115

RIN 3245-AG56

#### Surety Bond Guarantee Program

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would conform the regulations governing the Surety Bond Guarantee Program to certain provisions of the National Defense Authorization Act for Fiscal Year 2013 (NDAA), including the provisions that increase the contract amounts for which SBA is authorized to guarantee bonds, grant SBA the authority to partially deny liability under its bond guarantee, and prohibit SBA from denying liability based on material information that was provided as part of the guarantee application in the Prior Approval Program. In addition, changes are proposed with respect to the Quick Bond Guarantee Application and Agreement, the timeframes for taking certain actions related to claims, the dollar threshold for determining when a change in the Contract or bond amounts meets certain criteria or requires certain action, and the elimination of references to the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) that have expired.

**DATES:** Comments must be received on or before September 30, 2013.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AG56, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
  - **Mail:** Office of Surety Guarantees, Suite 8600, 409 Third Street SW., Washington, DC 20416.
  - **Hand Delivery/Courier:** Office of Surety Guarantees, 409 Third Street SW., Washington, DC 20416.
- SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to

submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please submit the information to Office of Surety Guarantees, 409 Third Street SW., Washington, DC 20416 or send an email to the Office of Surety Guarantees. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:**

Barbara J. Brannan, Office of Surety Guarantees, 202-205-6545, email: [Barbara.brannan@sba.gov](mailto:Barbara.brannan@sba.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background Information

The U.S. Small Business Administration (SBA) guarantees bid, payment and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and, thereby, assists small businesses in obtaining greater access to contracting opportunities. 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. This proposed rule would make the following changes to the program:

#### A. Conform Regulations to NDAA

This proposed rule would conform the regulations governing the Surety Bond Guarantee Program to the following changes enacted by the National Defense Authorization Act for Fiscal Year 2013, Public Law 112-239, 126 Stat. 1632:

- (1) Increasing the contract amount for which SBA is authorized to guarantee bonds from \$2 million to \$6.5 million (as adjusted for inflation in accordance with 41 U.S.C. 1908);
- (2) increasing the contract amount for which SBA is authorized to guarantee bonds to \$10 million with a Federal contracting officer's certification that the guarantee is necessary for the small business to obtain bonding;
- (3) authorizing SBA to deny liability under its bond guarantee in whole or in part within its discretion; and

(4) prohibiting SBA from denying liability based on material information that was provided as part of the guarantee application in the Prior Approval Program.

#### B. Partial Subcontract

The existing regulation, 13 CFR 115.13(a)(5), states that SBA will not guarantee bonds for Principals "who are primarily brokers or who have effectively transferred control over the project to one or more subcontractors." Surety companies and agents have questioned the meaning of the phrase "effectively transferred control over the project", and SBA agrees that clearer guidance is needed to determine when the use of subcontractors becomes objectionable. SBA recognizes that many small general contractors may subcontract a high percentage of the work under a contract, and this is not necessarily objectionable. However, SBA does not want the subcontracting to result in the Principal—the Person primarily liable to complete the Contract—losing control over the project. In the most egregious cases, the Principal may be acting as a front for the subcontractor. This objectionable activity may not be discernible solely from the percentage of work subcontracted on a project. Although that is often a good indicator, SBA believes that control is also a function of who has responsibility for overseeing and managing the work performed under the Contract. Accordingly, SBA is proposing to revise the second sentence of this provision to clarify that, to be eligible for a bond guaranteed by SBA, the Principal must retain full responsibility for the oversight and management of the Contract, including any work performed by any subcontractor, and may not subcontract the full scope of the statement of work.

#### C. Quick Bond

The proposed rule would revise the regulations governing the Quick Bond Guarantee Application and Agreement. Under 13 CFR 115.30(d)(2)(ii)(C), the Quick Bond Application and Agreement (SBA Form 990A) may not be used for any contract that includes a warranty/maintenance period exceeding 12 months. However, the definition of Contract in 13 CFR 115.10 allows for the Contract to include a maintenance agreement of 2 years or less (for

defective workmanship or materials only), and also allows, with SBA's written approval, for longer maintenance agreements and broader coverage. SBA has reassessed the need for this exclusion, and is proposing to delete the 12 month warranty/maintenance exclusion from 13 CFR 115.30(d)(2)(ii)(C).

In addition, under 13 CFR 115.30(d)(2)(ii)(D), SBA Form 990A may not be used if the contract includes a provision for liquidated damages that exceed \$250 per day. The proposed rule would increase to \$1,000 per day the amount of liquidated damages subject to the exclusion. SBA received suggestions from the surety industry for this increase, which is consistent with industry standards for a streamlined application process.

By making the above changes, the Agency hopes to encourage greater use of the Quick Bond Guarantee Application and Agreement.

#### *D. Increasing Certain Dollar Thresholds*

The rule proposes to amend the following provisions to change the dollar threshold for determining when a change in the Contract or bond amounts may result in denial of liability or requires certain action. Currently, these provisions provide that the thresholds are met when the Contract or bond amount changes by 25% or \$50,000, whichever is less. This formula means that the \$50,000 threshold is always the lesser amount for contracts that are greater than \$200,000, and the average amount of a Contract is now approximately twice this amount, or \$400,000. In addition, for some of the provisions, the \$50,000 threshold has not changed since 1989. Further, SBA would expect the average contract amount to increase with the recent increase in the maximum contract amount to \$6.5 million. Thus, SBA is proposing to update the dollar threshold to \$100,000 for the following provisions:

(1) Under 13 CFR 115.19(c)(1), SBA is relieved of liability if the Surety has committed a material breach of one or more terms or conditions of its agreement with SBA. A material breach is considered to have occurred if such breach (or such breaches in the aggregate) causes an increase in the Contract amount or in the bond amount of at least 25% or \$50,000. The proposed rule would increase the dollar threshold to \$100,000.

(2) Under 13 CFR 115.19(d), SBA is relieved of liability if the Surety has committed a substantial violation of SBA regulations, which is defined in part as a violation which causes an increase in the bond amount of at least

25% or \$50,000 in the aggregate. The proposed rule would increase the dollar threshold to \$100,000.

(3) Under 13 CFR 115.19(e)(2), SBA is relieved of liability if the Surety agrees to or acquiesces in any material alteration in the terms, conditions, or provisions of the bond. For a Prior Approval Surety, such alteration includes any increase in the bond amount of at least 25% or \$50,000. The proposed rule would increase the dollar threshold to \$100,000.

(4) Under 13 CFR 115.32(d), a Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% or \$50,000 as soon as the Surety acquires knowledge of the change, and also must obtain SBA's prior written approval of an increase in the original bond amount as a result of a single change order of at least 25% or \$50,000. The proposed rule would increase these dollar thresholds to \$100,000.

(5) Under 13 CFR 115.67(a), a PSB Surety must pay the additional fees due from the Principal and the Surety on increases aggregating 25% of the contract or bond amount or \$50,000. The proposed rule would increase the dollar threshold to \$100,000.

#### *E. Reducing Certain Timeframes*

With the wide-spread use of electronic processing of claims and payments, SBA believes that the timeframes for taking the following actions could be reduced:

(1) Under 13 CFR 115.17(b), the Surety is required to pursue all possible sources of salvage and recovery, and SBA is entitled to its guaranteed percentage of all salvage and recovery. Currently, 13 CFR 115.17(b)(2) requires the Surety to reimburse or credit SBA with its share within 90 days of receipt of any recovery by the Surety; the proposed rule would reduce this timeframe to 45 days. Similarly, the proposed rule would reduce the timeframe for the Surety to pay SBA its share of any settlement amount under 13 CFR 115.36(a)(3) from 90 days to 45 days.

(2) Under 13 CFR 115.35(c)(4) and 115.70(a), SBA pays its share of the loss to both the Prior Approval Surety and the PSB Surety within 90 days of receipt of the requisite information. The proposed rule would reduce this timeframe to 45 days.

In addition, under 13 CFR 115.35(c)(1) and 115.70(a), both the Prior Approval Surety and the PSB Surety must submit to SBA a claim for reimbursement for losses paid by the Surety within 1 year from the time of each disbursement. The proposed rule

would reduce this timeframe to 90 days. This reduction would facilitate SBA's ability to review and verify the claim without unnecessary delay.

## **II. Section-by-Section Analysis**

*Section 115.10.* SBA is proposing to revise the definition of "Applicable Statutory Limit" to include the maximum amounts of any Contract or Order for which SBA is authorized by the NDAA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond. The statutory limits set by the NDAA are: (1) \$6.5 million (as adjusted for inflation in accordance with 41 U.S.C. 1908); and (2) \$10 million if a contracting officer of a Federal agency certifies that such guarantee is necessary. In addition, SBA is proposing to include a reference in the definition to the maximum amounts of any Contract or Order when SBA guarantees the bond in connection with a procurement related to a major disaster pursuant to section 12079 of Public Law 110-246. Under this provision, which was enacted on June 18, 2008, the maximum amounts are (1) \$5 million, and (2) \$10 million on Federal Contracts or Orders at the request of the Head of any Federal agency involved in reconstruction efforts in response to a major disaster. The authority to guarantee bonds under this provision is subject to the availability of funds appropriated in advance specifically for the purpose of guaranteeing bonds for any Contract or Order related to a major disaster. SBA does not expect this authority to be often used, given NDAA's increase in the maximum amounts for any Contract or Order up to \$6.5 million (and \$10 million if a Federal contracting officer certifies that such guarantee is necessary) and the requirement that funds be appropriated in advance specifically for guaranteeing bonds related to a major disaster.

*Section 115.12(b).* SBA is proposing to delete the reference to the "Contract Bonds" section of the current "Manual of Rules, Procedures and Classifications of the Surety Association of America", and to replace this reference with two specific types of bonds, Commercial and Fidelity bonds, that are not eligible for an SBA guarantee.

*Section 115.12(e)(3).* SBA is proposing to delete this provision in its entirety, as it relates to requirements imposed by the Recovery Act that expired on September 30, 2010.

*Section 115.12(e)(4).* SBA is proposing to renumber this provision as (e)(3), and to revise this provision to reflect the authority to guarantee bonds on Federal Contracts or Orders greater

than \$6.5 million, but not exceeding \$10 million, upon a signed certification of a Federal contracting officer.

*Section 115.12(e)(5).* SBA is proposing to renumber this provision as (e)(4), to revise the introductory paragraph to clarify that this paragraph implements an alternative statutory authority for guaranteeing bonds for procurements related to a major disaster, and to delete paragraph (B)(iii) of this provision, as it relates to requirements imposed by the Recovery Act that expired on September 30, 2010.

*Section 115.13(a)(5).* SBA is proposing to revise this provision to clarify that, to be eligible for a bond guaranteed by SBA, the Principal must retain full responsibility for the oversight and management of the Contract, including any work performed by any subcontractor, and may not subcontract the full scope of the statement of work.

*Section 115.17(b)(2).* SBA is proposing to reduce the time frame allowed for a Surety to reimburse or credit SBA for salvage and recovery from 90 days to 45 days after the Surety receives any salvage and recovery.

*Section 115.19.* SBA is proposing to revise the introductory paragraph of this provision to conform it to current law by deleting the time frame reference required by the Recovery Act, which has expired, and by inserting the relevant requirements of the NDAA, including the authority of SBA to deny liability, in whole or in part, within its discretion if any of the circumstances in paragraphs (a) through (h) of this section exist, and the prohibition on denying liability based on material information that was provided as part of the guarantee application in the Prior Approval Program. SBA is also proposing to amend section 115.19(c)(1) by increasing the dollar threshold for determining whether the Surety has committed a material breach of one or more terms or conditions of its Prior Approval or PSB Agreement from \$50,000 to \$100,000. In addition, SBA is proposing to amend section 115.19(d) by increasing the dollar threshold for determining whether the Surety has committed a substantial violation of SBA regulations from \$50,000 to \$100,000, and proposing to amend section 115.19(e)(2) by increasing the dollar threshold for determining whether a Prior Approval Surety has agreed to or acquiesced in any material alternation in the terms, conditions, or provisions of the bond from \$50,000 to \$100,000. In each of these sections, the phrase “whichever is less” is being added after the \$100,000 to clarify the meaning of this requirement.

*Section 115.30(d)(2).* Under the current 13 CFR 115.30(d)(2)(ii)(C), the Quick Bond Application and Agreement (SBA Form 990A) may not be used for any contract where the time for completion of the Contract or the warranty/maintenance period exceeds 12 months. SBA is proposing to delete the phrase “or the warranty/maintenance period” from this provision. In addition, under current 115.30(d)(2)(ii)(D), SBA Form 990A may not be used for any contract that includes a provision for liquidated damages that exceed \$250 per day. SBA is proposing to increase the allowable liquidated damages provision from \$250.00 per day to \$1,000.00 per day.

*Section 115.31(d).* SBA is proposing to revise the final sentence of this provision by basing the example on the current statutory limit of \$6.5 million.

*Section 115.32(d).* SBA is proposing to amend this provision by changing the dollar threshold for determining when the Prior Approval Surety must notify SBA of the change and/or obtain SBA's approval from at least \$50,000 to \$100,000. The phrase “whichever is less” is being added to clarify the meaning of this requirement.

*Section 115.35(c)(1).* SBA is proposing to reduce the time frame allowed for a Prior Approval Surety to submit a claim to SBA from one year to 90 days after the Surety pays the claim. In addition, the title of the SBA Form 994H, “Default Report, Claim for Reimbursement and Record of Administrative Action,” is being changed to “Default Report, Claim for Reimbursement and Report of Recoveries,” to reflect the current version of the form. This form is used to process recoveries, and adding “Recoveries” to the title of the form promotes its proper use.

*Section 115.35(c)(4).* SBA is proposing to reduce the time frame for SBA to pay a claim submitted by a Surety in the Prior Approval Program from 90 days to 45 days after receipt of the requisite information.

*Section 115.36(a)(3).* SBA is proposing to reduce the time frame allowed for a Surety to reimburse SBA its share of a settlement from 90 days to 45 days after receipt.

*Section 115.67(a).* SBA is proposing to increase the dollar threshold for determining when a PSB Surety must present checks for additional fees due from the Principal and the Surety from \$50,000 to \$100,000. The phrase “whichever is less” is being added to clarify the meaning of this requirement.

*Section 115.69.* This provision currently provides that SBA will reimburse a PSB Surety for the

guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract, and that the PSB Surety does not need SBA approval to make Imminent Breach payments. It also provides that the aggregate of the payments by SBA cannot exceed 10% of the Contract amount, unless SBA finds that a greater payment is necessary and reasonable. For payments that exceed 10% of the Contract amount, SBA is proposing to revise this provision to give the PSB Surety the opportunity to request SBA to approve the amount prior to the Surety making the Imminent Breach payment. SBA will approve such payment if SBA finds that the payment is necessary and reasonable. If the Surety does not request prior SBA approval for such payments, SBA may refuse to reimburse the Surety if SBA finds that the payment that exceeds 10% of the Contract amount was not necessary and reasonable.

*Section 115.70(a).* SBA is proposing to reduce the time frame allowed for a PSB Surety to submit a claim to SBA from one year to 90 days after the Surety pays the claim. SBA is also proposing to reduce the time frame for SBA to pay a claim submitted by a Surety in the PSB Program from 90 days to 45 days after receipt of the requisite information. *Compliance with Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)*

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this proposed rule does not constitute a significant regulatory action under Executive Order 12866.

#### *Executive Order 12988*

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

#### *Executive Order 13132*

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

implications warranting preparation of a federalism assessment.

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

SBA has determined that this proposed rule imposes no additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

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

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. There are approximately one dozen Sureties that participate in the SBA program, and no part of this proposed rule would impose any significant additional cost or burden on them. Consequently, this rule does not meet the substantial number of small businesses criterion anticipated by the Regulatory Flexibility Act.

#### List of Subjects in 13 CFR Part 115

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

For the reasons cited above, the Small Business Administration proposes to amend 13 CFR part 115 as follows:

### PART 115—SURETY BOND GUARANTEE

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

**Authority:** 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

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

#### § 115.10 Definitions.

\* \* \* \* \*

*Applicable Statutory Limit* means the maximum amount, set forth below, of any Contract or Order for which SBA is authorized to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond:

(1) \$6.5 million (as adjusted for inflation in accordance with 41 U.S.C. 1908);

(2) \$10 million if a contracting officer of a Federal agency certifies, in accordance with section 115.12(e)(3), that such guarantee is necessary; or

(3) if SBA is guaranteeing the bond in connection with a procurement related to a major disaster pursuant to section 12079 of Public Law 110–246, see section 115.12(e)(4).

\* \* \* \* \*

■ 3. Amend § 115.12 as follows:

■ (a) Revise paragraph (b) to read as set forth below;

■ (b) Remove paragraph (e)(3);

■ (c) Redesignate paragraph (e)(4) as paragraph (e)(3);

■ (d) In redesignated paragraph (e)(3), revise the heading and first sentence as set forth below;

(e) Redesignate paragraph (e)(5) as paragraph (e)(4) and revise the heading and introductory paragraph as set forth below;

(f) In redesignated paragraph (e)(4), remove paragraph (B)(iii) and redesignate paragraph (B)(iv) as paragraph (B)(iii).

The additions and revisions read as follows:

#### § 115.12 General program policies and provisions.

\* \* \* \* \*

(b) *Eligibility of bonds.* Bid Bonds and Final Bonds are eligible for an SBA guarantee if they are executed in connection with an eligible Contract, as defined in § 115.10, Definitions. Commercial and Fidelity bonds are not eligible for SBA guarantees. Ancillary Bonds may also be eligible for SBA’s guarantee. A performance bond must not prohibit a Surety from performing the Contract upon default of the Principal. \* \* \*

\* \* \* \* \*

(e) \* \* \*

(3) *Federal Contracts or Orders in excess of \$6,500,000 (as adjusted for inflation in accordance with section 1908 of title 41, United States Code).* SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than \$6,500,000 (as adjusted for inflation in accordance with 41 U.S.C. 1908), but not exceeding \$10,000,000, upon a signed certification of a Federal contracting officer. \* \* \*

\* \* \* \* \*

(4) *Alternative authority to guarantee bonds for Contracts and Orders related to a major disaster area.* Subject to the availability of funds appropriated in advance specifically for the purpose of guaranteeing bonds for any Contract or Order related to a major disaster, SBA may, as an alternative to the authority otherwise set forth in this Part,

guarantee bonds on any Contract or Order under the following terms and conditions:

\* \* \* \* \*

■ 4. Amend § 115.13 paragraph (a)(5) by revising the second sentence and adding a third sentence to read as follows:

#### § 115.13 Eligibility of Principal

(a) \* \* \*

(5) \* \* \* SBA will not guarantee bonds for Principals who are primarily brokers. In addition, the Principal must retain full responsibility for the oversight and management of the Contract, including any work performed by any subcontractor, and may not subcontract the full scope of the statement of work.

\* \* \* \* \*

■ 5. Amend § 115.17 paragraph (b)(2) by removing “90 days” and adding “45 days” in its place.

■ 6. Amend § 115.19 as follows:

■ (a) Revise the introductory paragraph as set forth below;

■ (b) Remove “\$50,000” wherever it appears in paragraphs (c)(1), (d), and (e)(2) and add in its place “\$100,000, whichever is less.”

#### § 115.19 Denial of liability.

In addition to equitable and legal defenses and remedies under contract law, the Act, and the regulations in this part, SBA is relieved of liability in whole or in part within its discretion if any of the circumstances in paragraphs (a) through (h) of this section exist, except that SBA shall not deny liability on Prior Approval bonds based solely upon material information that was provided as part of the guarantee application.

\* \* \* \* \*

■ 7. Amend § 115.30 as follows:

■ (a) In paragraph (d)(2)(i)(C), remove the phrase “or the warranty/maintenance period”;

■ (b) In paragraph (d)(2)(ii)(D), remove “\$250” and add “\$1,000” in its place.

■ 8. Amend § 115.31 by revising the final sentence of paragraph (d) to read as follows:

#### § 115.31 Guarantee Percentage.

\* \* \* \* \*

(d) \* \* \* For example, if a contract amount increases to \$6,800,000, SBA’s share of the loss under an 80% guarantee is limited to 76.5% [ $6,500,000/6,800,000 = 95.6\% \times 80\% = 76.5\%$ ].

\* \* \* \* \*

■ 9. Amend § 115.32 paragraph (d) by removing “\$50,000” and adding “\$100,000, whichever is less” in its place.

- 10. Amend § 115.35 as follows:
- (a) Revise paragraph (c)(1) as set forth below;
- (b) In paragraph (c)(4), remove “90 days” and add “45 days” in its place.

#### **§ 115.35 Claims for reimbursement of Losses.**

\* \* \* \* \*

(c) *Claim reimbursement requests.* (1) Claims for reimbursement for Losses which the Surety has paid must be submitted (together with a copy of the bond, the bonded Contract, and any indemnity agreements) with the initial claim to OSO on a “Default Report, Claim for Reimbursement and Report of Recoveries” (SBA Form 994H), within 90 days from the time of each disbursement. Claims submitted after 90 days must be accompanied by substantiation satisfactory to SBA. The date of the claim for reimbursement is the date of receipt of the claim by SBA, or such later date as additional information requested by SBA is received.

\* \* \* \* \*

- 11. Amend § 115.36 paragraph (a)(3) by removing “90 days” and adding “45 days” in its place.
- 12. Amend § 115.67 paragraph (a) by removing “\$50,000” and adding “\$100,000, whichever is less” in its place.
- 13. Revise § 115.69 to read as follows:

#### **§ 115.69 Imminent Breach.**

(a) *No Prior Approval Requirement.* SBA will reimburse a PSB Surety for the guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond. The aggregate of the payments by SBA under this section cannot exceed 10% of the Contract amount, unless the Administrator finds that a greater payment (not to exceed the guaranteed portion of the bond penalty) is necessary and reasonable. The PSB Surety does not need to obtain prior SBA approval to make Imminent Breach payments, except that the PSB Surety may request SBA to approve payments that exceed 10% of the Contract amount prior to the Surety making the payment. In no event will SBA make any duplicate payment under any provision of these regulations in this part.

(b) *Recordkeeping Requirement.* The PSB Surety must keep records of payments made to avoid Imminent Breach.

- 14. Amend § 115.70 paragraph (a) as follows:

- (a) Remove the term “1 year” in the first sentence and add the term “90 days” in its place; and

- (b) Remove the term “90 days” in the third sentence and add “45 days” in its place.

Dated: July 26, 2013.

**Karen G. Mills,**  
*Administrator.*

[FR Doc. 2013–18530 Filed 7–31–13; 8:45 am]

**BILLING CODE 8025–01–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA–2008–0616; Directorate Identifier 2007–NM–353–AD]**

**RIN 2120–AA64**

#### **Airworthiness Directives; the Boeing Company Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. That NPRM proposed to require repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary. That NPRM was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. This action revises that NPRM by proposing to revise the maintenance program to incorporate a revision to the Airworthiness Limitations Section of the maintenance planning data (MPD) document, and to remove airplanes from the applicability. We are proposing this supplemental NPRM to detect and correct failure of the engine fuel suction feed capability of the fuel system, which could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane. Since these actions impose an additional burden over that proposed in the previous NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

**DATES:** We must receive comments on this supplemental NPRM by September 16, 2013.

**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 <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

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

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5280; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3352; phone: 425–917–6438; fax: 425–917–6590; email: [suzanne.lucier@faa.gov](mailto:suzanne.lucier@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2008–0616; Directorate Identifier 2007–NM–353–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this