

funds from another account held individually or jointly by the member, so long as the credit union prominently states that any additional balance includes these additional overdraft amounts. The credit union may not simply state, for instance, that the second balance is the member's "available balance," or contains "available funds." Rather, the credit union should provide enough information to convey that the second balance includes these amounts. For example, the credit union may state that the balance includes "overdraft funds." Where a member has opted out of the credit union's discretionary overdraft service, any additional balance disclosed should not include funds credit unions provide under that service. Where a member has opted out of the credit union's discretionary overdraft service for some, but not all transactions, *e.g.*, the member has opted out of overdraft services for ATM and debit card transactions, a credit union that includes funds from its discretionary overdraft service in the balance should convey that the overdraft funds are not available for all transactions. For example, the credit union could state that overdraft funds are not available for ATM and debit card transactions.

3. *Automated systems.* The balance disclosure requirement in § 707.11(c) applies to any automated system through which the member requests a balance, including, but not limited to, a telephone response system, the credit union's Internet site, or an ATM. The requirement applies whether the credit union discloses a balance through an ATM owned or operated by the credit union or through an ATM not owned or operated by the credit union, including an ATM operated by an entity that is not a financial institution. If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

* * * * *

[FR Doc. E9-17313 Filed 7-21-09; 8:45 am]

BILLING CODE 7535-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115 and 121

RIN 3245-AF94

American Recovery and Reinvestment Act: Surety Bond Guarantees; Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements provisions of the American Recovery and Reinvestment Act of 2009 that pertain to the Surety Bond Guaranty (SBG) Program. Until September 30, 2010, the U.S. Small Business Administration (SBA) is authorized to guarantee bonds on Contracts of up to \$5,000,000 (or up to

\$10 million based upon the certification of a Federal contracting officer). SBA is further authorized, until September 30, 2010, to partially deny liability under its bond guarantee, but cannot deny liability in whole or even in part on the basis of material facts disclosed to SBA in a guarantee application submitted under the Prior Approval Program. In addition to implementing these authorities, this rule also revises the size standard for participation in the SBG Program, and makes several changes primarily for clarification purposes.

DATES: This rule is effective July 22, 2009.

Comment Date: Comments must be received on or before August 21, 2009.

ADDRESSES: You may submit comments, identified by RIN: 3245-AF94, 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 <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <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 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.

SUPPLEMENTARY INFORMATION:

I. Background Information.

The American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111-5, was enacted on February 17, 2009 to, among other things, promote economic activity by preserving and creating jobs and assisting those most impacted by the severe economic conditions facing the nation. The U.S. Small Business Administration is one of several agencies that will play a role in achieving these goals. As part of its recovery efforts, SBA will make several changes to the Agency's SBG program, which will provide an enhanced level of benefits to the small business

contractors and Surety companies that participate in the program. Under the SBG program SBA guarantees bid, payment and performance bonds for small contractors who cannot obtain bonds through regular commercial channels. SBA's guarantee gives Surety Companies an incentive to provide bonding for small businesses, and thereby assists small businesses in gaining greater access to contracting opportunities.

The various modifications to the SBG program as a result of the Recovery Act are temporary in nature and will expire on September 30, 2010. These modifications include an increase in the amount of the Contract or Order for which SBA is authorized to guarantee bonds; and revised standards for denial of liability on claims, and determining whether the small business contractor qualifies for a Recovery Act guaranteed bond. This interim final rule implements these changes and others as described in the following section-by-section analysis.

II. Section-by-Section Analysis

A new defined term, "Applicable Statutory Limit", has been added to § 115.10. Currently, §§ 115.12(e)(1) and (3), 115.19(a), 115.31(d) and 115.68 all state that "\$2,000,000" is the maximum dollar amount of a Contract for which SBA is authorized to guarantee bonds. Substitution of "Applicable Statutory Limit" for "\$2,000,000" in each of these provisions will make future amendments unnecessary each time the statutory limit is revised.

The definition of "Applicable Statutory Limit" also makes it clear that for any particular bond the Applicable Statutory Limit is the statutory limit in effect at the time a Prior Approval Surety's request for a bond guarantee is approved by SBA or a Preferred Surety executes a bond, without regard to any subsequent changes in that limit. However, if SBA guaranteed a Bid Bond, the Applicable Statutory Limit for the related Final Bonds, including Ancillary Bonds, is the one in effect when SBA guaranteed the Bid Bond.

The Recovery Act temporarily raises the Applicable Statutory Limit from \$2,000,000 to \$5,000,000 and further authorizes SBA to guarantee bonds on Federal Contracts in excess of \$5,000,000 (up to \$10,000,000) if a Federal contracting officer certifies the need for the guarantee; but SBA's authority to guarantee bonds on any Contract in excess of \$2,000,000 is scheduled to expire on September 30, 2010. Restrictions on bond guarantees for Contracts in excess of \$2,000,000 are

described below under the revisions to section 115.12(e) (3).

In addition, a new definition, "Order" has been added to § 115.10 in order to make it clear that SBA is authorized to guarantee bonds on indefinite delivery Contracts (definite quantity, indefinite quantity, or requirement Contracts), and that task orders or delivery orders issued under such Contracts will be subject to the same rules as all other Contracts, except where otherwise stated. This term is also added to the present definition of "Contract."

Section 115.12(b) is revised to remove the reference to the address of Surety Association of America, which is no longer current. Removal will make it unnecessary to revise the regulation each time the Association moves.

Section 115.12(e) is revised to include the new defined term "Order" and to address issues involving the determination of the amount of the Contract. In particular, section 115.12(e)(1) now clarifies how to determine the Contract amount for fixed price, requirements, and indefinite quantity Contracts. For fixed price contracts, the amount of the contract is the price excluding any options. The amount of the contract, for requirements contracts, is the price of the total estimated quantity to be ordered. For an indefinite quantity Contract, the amount of the Contract is the price of the specified minimum quantity to be ordered and, separately, for each Order under the indefinite quantity Contract, the price of the Order.

Section 115.12(e)(2) addresses the question of when construction Contracts and/or Orders for supplies and services should be aggregated for purposes of determining whether the Principal's total obligation exceeds the Applicable Statutory Limit.

Regardless of the penal sum of the bond in question, SBA has no authority to guarantee bonds on any Contract that exceeds the Applicable Statutory Limit at the time of bond execution. For the purpose of determining whether SBA's guarantee of a particular bond would exceed its authority, "Contract" means in this context the Principal's total duty to the Obligee in connection with a single project, regardless of the number of formally separate contracts, bonded or not, that set forth the respective obligations of the Principal and Obligee. Section 115.12(e)(2) addresses this question.

Section 115.12(e)(2)(i) restates SBA's long-standing rule with respect to construction Contracts in which substantially all the elements of the respective obligations of the Principal and Obligee—the project—are known

and set forth in considerable detail before the bonds are executed. If the stated compensation due the Principal does not then exceed the Applicable Statutory Limit, subsequent modifications that increase the Contract price will not, as such, invalidate SBA's guarantee obligation; even modifications that take the bonded Contract's price over the Applicable Statutory Limit will do no more than reduce SBA's guarantee percentage. However, if for any reason the Principal and Obligee choose before the bond is executed to set forth their respective total obligation in two or more separate documents, SBA must determine whether they are truly separate Contracts or parts of the same project. Section 115.12(e)(2)(i) sets forth the standards governing this determination.

In the case of service or supply Contracts and/or Orders, two or more separate Contracts or Orders will be aggregated only if it is determined, following SBA discussion with the contracting official awarding the Contracts or Orders, that a single Contract or Order could reasonably have satisfied the Obligee's requirement. Such discussion with the contracting official might be prompted by the simultaneous award of two or more Contracts or Orders for the same services or supplies to the same Principal, multiple awards for the same services or supplies to the same Principal within a very short timeframe, or a pattern of such awards to the same Principal over an extended period.

Section 115.12(e)(3) is revised to delete the current text because the relationship between separate Orders under an indefinite (multi-year) Contract and the Applicable Statutory Limit is now addressed in section 115.12(e)(2) and because the relationship between the Contract or Order Amount and the penal sum of the bond is addressed in § 115.19(a).

SBA has added a new paragraph (3), Contracts or Orders in excess of \$2,000,000, that implements the restrictions on the use of Recovery Act funds under Section 1604 of the Recovery Act, Public Law 111–5, February 17, 2009. Section 1604 provides that none of the funds appropriated or otherwise made available under the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. Guidance issued by the Office of Management and Budget provides that "[i]n exercising their available discretion to commit, obligate or expend funds under the

Recovery Act for grants and other forms of Federal financial assistance, executive departments and agencies, to the extent permitted by law, shall not approve or otherwise support funding for projects that are similar to those described in section 1604 of Division A of the Recovery Act." (Memorandum for the Heads of Executive Departments and Agencies, March 20, 2009, p. 2. available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/) Accordingly, SBA bond guarantees that are funded with Recovery Act funds (*i.e.*, bond guarantees for Contracts greater than \$2 million) may not be extended if the Obligee is an entity primarily engaged in these activities or the work required by the Contract is part of a project for the construction, renovation, or improvement of any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

SBA also has added a new paragraph (4), Federal Contracts or Orders in excess of \$5,000,000, that establishes the process for guarantees of bonds on such Contracts.

SBA has revised section 115.19 to reflect the Recovery Act's temporary provisions regarding SBA's authority to deny liability under its guarantee. The introductory language to section 115.19 is revised to include SBA's temporarily-granted discretion to deny liability in part. Under prior law, SBA had no discretion to accept partial liability. SBA was completely discharged from all liability in the event of certain circumstances set forth in the Small Business Act, the regulations on in the general law of contracts and suretyship, regardless of the circumstances of any particular case. In the case of a bond guaranteed by SBA between February 17, 2009 and September 30, 2010, inclusive, SBA has discretion to accept liability in part under circumstances that would previously discharge SBA completely.

Part 121 is revised at section 121.301(d) to incorporate the Recovery Act provision specifying, for the period starting February 17, 2009 and ending on September 30, 2010, that a concern is small only if it, together with its affiliates, meets the size standard corresponding to the NAICS code for the primary industry in which such business concern together with its affiliates is engaged. Section 508 of the Recovery Act amended Section 410 of the Small Business Investment Act by adding a new, but temporary, size standard for this program, prefaced by the words "Notwithstanding any other provision of law or any rule, regulation,

or order of the Administration * * *.” Accordingly, subparagraphs (d)(1), (2) and (3) are temporarily superseded.

III. Justification for Publication as Interim Final Rule.

In general, before issuing a final rule, SBA publishes the rule for public comment in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception from the general rule where the agency finds good cause to omit public participation. 5 U.S.C. 553(c)(3)(B). The good cause requirement is satisfied when prior public participation can be shown to be impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without first soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The current turmoil in the financial markets is having a negative effect on the availability of financing for small business, including diminished access to the commercial surety bond market. The bonding capacity of surety companies is substantially reduced, making them more risk-averse; and small concerns that were formerly acceptable risks are now seen as questionable. To enable these small concerns to continue to obtain the bonding they formerly obtained in the commercial market Congress has temporarily expanded the surety bond guarantee program. The beneficial effects of this expansion on these small concerns and on the sureties that will bond them are obvious. Less obviously, but no less significantly, the parties that will contract with them for goods and services will benefit because they will be obtaining these goods and services at the lowest price.

SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to help small businesses sustain and survive during this economic downturn. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest.

Although this rule is being published as an interim final rule, comments are solicited from interested members of the public. These comments must be submitted on or before August 21, 2009. SBA will consider these comments and the need for making any amendments as a result of these comments.

IV. Justification for Immediate Effective Date

The APA requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. The provisions of this rule relating to SBA’s authority to guarantee bonds on Contracts in excess of \$2,000,000, its authority to accept partial liability on its guarantee, and its authority to deny liability when a Prior Approval Surety’s applications has set forth the material facts upon which a denial would be based, will expire on September 30, 2010. The statutory authority for the size standard this rule establishes will also expire on September 30, 2010. These provisions do not require any adjustment to the public’s behavior; moreover, delaying implementation of the rule could have serious impact on the nation’s small businesses *Compliance with Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).*

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action for purposes of 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. This rule has no preemptive effect and is retroactive only to the extent that certain of the changes required by the Recovery Act will apply to bond guarantees issued on or after February 17, 2009—before the effective date of this interim final rule.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various layers of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

SBA has determined that this rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35, which require amendment to an existing information collection, Surety Bond Guarantee Assistance, OMB Control #3245–0007. This information collection is currently used to gather information necessary for processing applications for bond guarantees and requests for claim reimbursement. As a result of the Recovery Act changes to the SBG program, this information collection will be modified to collect additional information that will enable SBA to determine whether Recovery Act funds can be used for cost of bond guarantees, and also to track the use of those funds to meet reporting requirements under the Recovery Act. The information collection currently consists of 6 forms. These forms are available in paper and electronic formats. SBA will modify 3 of these forms and add a new form to the collection:

(1) Form 990, Surety Bond Guarantee Agreement and Form will be modified to add language to the certification portion of the form. This language is intended to ensure that the bond guarantee is not approved for a small business that is performing work for an obligee or on a contract that is related to the restricted uses of funds included in the Recovery Act, including casinos or other gambling establishments, aquariums, zoos, golf courses, or swimming pools.

(2) On Form 994, Application for Surety Bond Guarantee Assistance, the small business’s DUNS number is now being collected in Part I (Business Information) to provide data necessary for Federal Funding Accountability and Transparency Act reporting; the contract NAICS code, number of employees and number of jobs created and retained is being added to Part III (Contract Information) to provide statistical data that would enable SBA to report clearly on Recovery Act bonds versus non Recovery Act bonds; and language in Parts II (Principal Information) and V (Applicant’s Certification) is being modified for clarification purposes.

(3) Form 994H, Default Report, Claim Reimbursement and Record of Administrative Action, is also being modified to add a certification regarding the Surety’s compliance with SBG

program regulations and other requirements, including the Recovery Act requirements.

(4) A new form, 994R, Application for Surety Bond Guarantee—Under the Recovery and Reinvestment Act—is also being added to the collection. This form is essentially a rider to Form 994, and will be completed only if the bond is related to the Recovery Act, determined if the original contract amount is over \$2 million. The additional information collected on this rider is needed to fulfill reporting requirements on the outcomes and metrics related to the Recovery Act. The information that will be collected on this rider includes a disclosure about contract amounts in excess of \$5 million, and whether certification has been obtained from the applicable Contracting Officer regarding such contract amounts. The rider also requires the small business applicant to assert whether contract involves construction, renovation, or operation of a casino or other gambling establishment, golf course, zoo, aquarium or swimming pool.

SBA has submitted this information collection to the Office of Management and Budget (OMB) for review and approval under the emergency processing procedures in 5 CFR 1320.13. If OMB approves the request for emergency approval, SBA will submit this information collection for standard review following the emergency approval period. Any comments received as a result of this publication will be addressed at that time.

The title, description and number of respondents, estimated annual cost and hour burdens imposed on the respondents as a result of this collection of information are outlined below. SBA invites comments on: (1) Whether the changes to the described collection of information are necessary for the proper performance of SBA's operation of the Surety Bond program, including whether the information will have practical utility; (2) the accuracy of SBA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503, and to

Barbara J. Brannan, Office of Surety Guarantees, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Title: Surety Bond Guarantee Assistance.

OMB Control Number: 3245-0007.

Form Numbers—SBA Forms, 990, 991, 994, 994B, 994F and 994H, [Current] and Form 994R [New].

Description of Respondents: (i) The small business contractor completes Forms 991, 994, 994F, and 994—Rider; (ii) The Surety Agent completes Forms 990, 994B, and 994H.

Total Estimated Number of Respondents for all forms: 1,050; (Small businesses—700; Surety Agents—350).

Frequency of Responses: On occasion—per application for guarantee on surety bond, or for claim reimbursement.

Total Estimated Number of Responses for all forms: 17,965. This estimate reflects an increase of 49 bonds using Recovery Act funds (*i.e.*, bonds for Contracts or Orders in excess of \$2M and up to \$10M).

Total Estimated Hour Burden: 2,001. This total reflects an estimated increase of 42 hours due to the changes pursuant to the Recovery Act.

Regulatory Flexibility Act

Because this rule is an interim final rule, there is no requirement for SBA to prepare a Regulatory Flexibility Act (RFA) analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare analysis that describes whether the impact of the rule will have a significant impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required.

List of Subjects

13 CFR Part 115

Claims, Guarantee authority, Surety bond guarantees.

13 CFR Part 121

Size eligibility provisions and standards.

■ For the reasons stated in the preamble, SBA amends 13 CFR parts 115 and 121 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for 13 CFR part 115 is revised to read as follows:

Authority: 5 U.S.C. app. 3, 15 U.S.C. 687b, 687c, 694a, 694b, 694b note, Pub. L. 106-554; and Pub. L. 108-447, Div. K, Sec. 203.

■ 2. Amend § 115.10 as follows:

■ (a) Revise the first sentence of the definition of the word “Contract”; and

■ (b) Add new definitions of “Applicable Statutory Limit” and “Order” in alphabetical order.

§ 115.10 Definitions.

* * * * *

Applicable Statutory Limit means the maximum amount of any Contract, or Order, for which Section 411(a) of the Small Business Investment Act, as amended from time to time, authorizes the SBA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond. The Applicable Statutory Limit from February 17, 2009 through September 30, 2010, is \$5,000,000; provided, however, that during this period the Applicable Statutory Limit is \$10,000,000 for a particular Contract or Order if a contracting officer of a Federal agency certifies in writing that a guarantee in excess of \$5,000,000 is necessary.

* * * * *

Contract means a written obligation of the Principal, including an Order, requiring the furnishing of services, supplies, labor, materials, machinery, equipment, or construction. * * *

* * * * *

Order means a task order for services or delivery order for supplies issued under an indefinite delivery Contract (definite quantity, indefinite quantity, or requirements).

* * * * *

■ 3. Amend § 115.12 by revising paragraphs (b) and (e), to 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, and are of a type listed in the “Contract Bonds” section of the most recent Manual of Rules, Procedures, Classifications of the Surety Association of America. 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) *Amount of Contract*—(1) *Determination of Amount of Contract.* For a fixed price Contract, the amount

of the Contract is the price excluding any options. For a requirements Contract, the amount of the Contract is the price of the total estimated quantity to be ordered under the Contract. For an indefinite quantity Contract, the amount of the Contract is the price of the specified minimum quantity to be ordered under the Contract and, for each Order issued under such Contract, the price of each such Order. The amount of the Contract or Order to be bonded must not exceed the Applicable Statutory Limit as of the date:

- (i) SBA approves a Prior Approval Surety's request for a Bid Bond guarantee;
- (ii) A Preferred Surety Executes a Bid Bond; or
- (iii) The date Final Bonds (and any Ancillary Bonds) unrelated to an SBA-guaranteed Bid Bond are Executed by a Preferred Surety or by a Prior Approval Surety following SBA's approval of its request for a guarantee of Final Bonds.

(2) *Aggregation of Contract and Order amounts.* (i) The amounts of two or more formally separate Contracts for a single construction project are aggregated to determine the Contract amount unless the Contracts are to be performed in phases and the prior bond is released before the beginning of each succeeding phase. A bond may be considered released even if the warranty period it is covering has not yet expired. For purposes of this paragraph, a "single construction project" means one represented by two or more Contracts of one Principal or its Affiliates with one Oblige or its Affiliates for performance at the same location, regardless of job title or nature of the work to be performed.

(ii) The amounts of two or more Contracts or Orders for supplies and services awarded to the same Principal or its Affiliates are aggregated to determine the Contract or Order amount if SBA determines, after discussion with the contracting official responsible for the award of the contract, that award of a single Contract or Order could reasonably have satisfied the supply or service requirement at the time of issuance.

(3) *Contracts or Orders in excess of \$2,000,000.* SBA is not authorized to guarantee bonds on Contracts or Orders in excess of \$2,000,000 if the statement of work involves, directly or indirectly, construction, operation, renovation or improvement of a casino or other gambling establishment, aquarium, zoo, golf course or swimming pool, or the Contract Oblige has one of the following NAICS codes:

- (i) 713210—"Casinos (Except Casino Hotels)";

- (ii) 721120—"Casino Hotels";
- (iii) 713290—"Other Gambling Industries";
- (iv) 713910—"Golf Courses and Country Clubs";
- (v) 712130—"Zoos and Botanical Gardens"; or
- (vi) 713940—"Fitness and Recreational Sports Centers" if SBA determines the business is a swimming pool.

(4) *Federal Contracts or Orders in excess of \$5,000,000.* Through September 30, 2010, SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than \$5,000,000, and up to \$10,000,000, upon a signed certification of a Federal contracting officer. The contracting officer's certification must include a statement that the small business is experiencing difficulty obtaining a bond and that an SBA bond guarantee would be in the best interests of the Government. The certification must be express mailed to SBA, Office of Surety Guarantees, 409 Third Street, SW., Suite 8600, Washington, DC 20416, or faxed to the Office of Surety Guarantees at 202-481-0390, with a copy provided to the small business, and must include the following additional information:

- (i) Name, address and telephone number of the small business;
- (ii) Offer or Contract number and brief description of the contract; and
- (iii) Estimated Contract value and date of anticipated award determination.

* * * * *

■ 4. Amend § 115.19 by revising the introductory text and paragraph (a) to read as follows:

§ 115.19 Denial of liability.

Except for bonds executed on or after February 17, 2009 and before October 1, 2010, 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 if any of the circumstances in paragraphs (a) through (h) of this section exist. For bonds executed on or after February 17, 2009 and before October 1, 2010, SBA is relieved of liability in whole or in part within its discretion under those circumstances, except that SBA shall not deny liability on Prior Approval bonds executed during such timeframe based solely upon material information that was provided as part of the guarantee application.

(a) *Excess Contract or bond amount.* The total Contract or Order amount at the time of Execution of the bond exceeds the Applicable Statutory Limit (see § 115.10) or the bond amount at any

time exceeds the total Contract or Order amount.

* * * * *

■ 5. Amend § 115.31 by revising the heading and first sentence of paragraph (d), and revising paragraph (e), to read as follows:

§ 115.31 Guarantee percentage.

* * * * *

(d) *Contract or Order increases exceed Applicable Statutory Limit.* If the Contract or Order amount is increased above the Applicable Statutory Limit after Execution of the bond, SBA's share of the Loss is limited to that percentage of the increased Contract or Order amount that the Applicable Statutory Limit represents multiplied by the guarantee percentage approved by SBA.

(e) *Contract or Order decrease to \$100,000 or less.* If the Contract or Order amount decreases to \$100,000, or less, after Execution of the bond, SBA's guarantee percentage increases to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested.

■ 6. Section 115.68 is revised to read as follows:

§ 115.68 Guarantee percentage.

SBA reimburses a PSB Surety in an amount not to exceed 70% of the Loss incurred and paid. Where the total Contract or Order amount increases beyond the Applicable Statutory Limit after Execution of the bond, SBA's share of the Loss is limited to that percentage of the increased Contract or Order amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For an example, see § 115.31(d).

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR Part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 662(5) and 694a; and Pub. L. 105-135, sec. 401 *et seq.*, 111 Stat. 2592.

■ 2. Amend § 121.301 by adding a new paragraph (d)(4) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

* * * * *

(4) Notwithstanding paragraphs (d) (1), (2) and (3) of this section, from February 17, 2009 through September 30, 2010, a concern is small only if it is a business concern that, combined with its affiliates, does not exceed the size standard designated for the primary

industry of the business concern combined with its affiliates.

* * * * *

Dated: July 16, 2009.

Karen Gordon Mills,

Administrator.

[FR Doc. E9-17323 Filed 7-17-09; 11:15 am]

BILLING CODE 8025-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

[Docket No. FDA-2009-N-0270]

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of two new animal drug applications

(NADAs) and an abbreviated new animal drug application (ANADA). In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADAs and ANADA.

DATES: This rule is effective August 3, 2009.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV-212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9079, e-mail: john.bartkowiak@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the two NADAs and ANADA listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1.

Sponsor	NADA/ANADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Wellmark International, 1501 East Woodfield Rd., suite 200, West Schaumburg, IL 60173	NADA 141-162 Zodiac Fleatrol Flea Caps (S-methoprene)	520.1390 (011536)
IDEXX Pharmaceuticals, Inc., 7009 Albert Pick Rd., Greensboro, NC 27409	NADA 141-178 NAVIGATOR Paste (nitazoxanide)	520.1498 (065274)
Abbott Laboratories, North Chicago, IL 60064	ANADA 200-279 KETAFLU Injection (ketamine HCl, USP)	522.1222a (000074)

In a notice published elsewhere in this issue of the Federal Register, FDA gave notice that approval of NADAs 141-162 and 141-178, and ANADA 200-279, and all supplements and amendments thereto, are withdrawn, effective August 3, 2009. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect the withdrawal of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects in 21 CFR Parts 520 and 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1390 [Removed]

■ 2. Remove § 520.1390.

§ 520.1498 [Removed]

■ 3. Remove § 520.1498.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 4. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1222a [Amended]

■ 5. In paragraph (b) of § 522.1222a, remove "000074,".

Dated: July 14, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9-17409 Filed 7-21-09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 524

[Docket No. FDA-2009-N-0665]

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADAs) and one abbreviated new animal drug application (ANADA) from Virbac AH, Inc., to Cross Vetpharm Group Ltd.

DATES: This rule is effective July 22, 2009.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8307, e-mail: david.newkirk@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Ft.