

# Rules and Regulations

Federal Register

Vol. 76, No. 10

Friday, January 14, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 115

RIN 3245-AF77

#### Surety Bond Guarantee Program; Disaster and Miscellaneous Amendments

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is issuing this final rule to implement the authority provided by the Small Business Disaster Response and Loan Improvements Act of 2008, for issuing surety bond guarantees for contracts and orders related to a major disaster. The rule also clarifies that the SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

**DATES:** This rule is effective on February 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara J. Brannan, Office of Surety Guarantees, 202-205-6545, *e-mail:* [barbara.brannan@sba.gov](mailto:barbara.brannan@sba.gov).

**SUPPLEMENTARY INFORMATION:** SBA guarantees bonds on contracts up to \$2 million for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee provides sureties with the incentive to provide bonding for these contractors, strengthening their ability to obtain bonding and to access greater contracting opportunities.

This rule implements the authority granted to the Agency in Sec. 12079 of subtitle B of title XII of Public Law 110-246, which establishes the bonding thresholds for any procurement related to a major disaster. It adds a new provision to SBA regulations that authorizes SBA to approve, under certain conditions, an SBA bond

guarantee on an individual Contract or Order up to \$5,000,000 at the time of bond execution. For products or services procured under non-Federal Contracts or Orders up to \$5,000,000, SBA may issue a bond guarantee if the products will be manufactured or the services will be performed in a major disaster area identified in the Federal Emergency Management Agency (FEMA) Web site. For products or services procured under Federal Contracts or Orders up to \$5,000,000, SBA may issue a bond guarantee if:

(a) The products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site; or (2) the products will be manufactured or the services will be performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area. SBA may issue a bond guarantee on a Federal Contract or Order up to \$10,000,000 if it meets one of the conditions above and is requested by the Head of the Agency involved in disaster reconstruction efforts.

Additionally, this final rule provides that SBA's authority to guarantee bonds in the amounts authorized by Public Law 110-246 for a specific disaster would apply only during the 12 month period following the disaster declaration unless SBA extends, in its discretion, the authority for such disaster. SBA will publish any notices of extension in the **Federal Register**.

Lastly, this final rule clarifies that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

#### Discussion of Public Comments

On April 26, 2010, SBA published the notice of proposed rulemaking with request for comment on these changes to the surety bond program in the **Federal Register** at 75 FR 21521. The comment period ended on May 26, 2010. SBA did not receive any public comments.

*Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612)*

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant

regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

#### Executive Order 12988

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

#### Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this final 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 final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601-612

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

List of Subjects in 13 CFR Part 115

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

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

PART 115—SURETY BOND GUARANTEE

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

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

■ 2. In § 115.10, revise the definition of "Applicable Statutory Limit" and add a definition of "Head of Agency" in alphabetical order to read as follows:

§ 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, or other law, authorizes SBA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond.

\* \* \* \* \*

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

\* \* \* \* \*

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

§ 115.12 General program policies and provisions.

\* \* \* \* \*

(e) \* \* \*

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

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

(A) For products or services procured under a Federal Contract or Order, the

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

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

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

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

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

\* \* \* \* \*

■ 4. Amend § 115.16 as follows:

■ a. Remove the word "and" at the end of paragraph (f)(3);

■ b. Remove the punctuation "." at the end of paragraph (f)(4) and add "; and" in its place; and

■ c. Add paragraph (f)(5) to read as follows:

§ 115.16 Determination of Surety's Loss.

\* \* \* \* \*

(f) \* \* \*

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

Dated: January 6, 2011.

Karen G. Mills, Administrator.

[FR Doc. 2011-652 Filed 1-13-11; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2010-0808; Airspace Docket No. 10-AWP-14] RIN 2120-AA66

Amendment of Class E Airspace; Kwajalein Island, Marshall Islands, RMI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule; technical amendment published in the Federal Register. In that rule, errors were made in the airspace description. This action corrects those errors.

DATES: Effective date 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace Regulation and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2010, a final rule; technical amendment was published in the Federal Register, FAA Docket No. FAA-2010-0808, Airspace Docket No. 10-AWP-14 that amended Title 14 Code of Federal Regulations part 71 by amending Class E airspace; Kwajalein Island, Marshall Islands, RMI (75 FR 61993). Specifically, the Kwajalein Tactical Air Navigation System reference was removed from the legal descriptions. However, the airspace descriptions contained several data points that were in error. This action corrects those errors. The correct full legal description is provided below.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace area for Kwajalein Island, Marshall Islands, RMI, as published in the Federal