

## Fiscal Service, Treasury

## § 223.3

### § 215.12 Supersession, amendment and termination provisions.

(a) This agreement supersedes any prior agreement between the Secretary of the Treasury and a State or city pursuant to 5 U.S.C. 5516, 5517, or 5520.

(b) This agreement shall be subject to any amendment of 5 U.S.C. 5516, 5517, 5520 or Executive Order 11997, and any rules and regulations issued pursuant to them and amendments thereto.

(c) This agreement may be terminated as to a specific State or city or county which is a party to this agreement by providing written notice to that effect to the Secretary at least 90 days prior to the proposed termination.

[42 FR 33731, July 1, 1977. Redesignated at 71 FR 2150, Jan. 13, 2006]

## PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

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AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 9304-9308.

### § 223.1 Certificate of authority.

The regulations in this part will govern the issuance by the Secretary of the Treasury, acting through the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), of certificates of authority to bonding companies to do business with the United States as sureties on, or reinsurers of, Federal surety bonds (hereinafter “bonds” or “obligations”) under the authority of 31 U.S.C. 9304-9308 and this part, and the acceptance of such obligations. The regulations in this part also govern the revocation of certificates.

[79 FR 61999, Oct. 16, 2014]

### § 223.2 Application for certificate of authority.

Every company wishing to apply for a certificate of authority shall submit an application to the Bureau of the Fiscal Service, U.S. Department of the Treasury, c/o Surety Bond Branch, to the location, and in the manner, specified online at [http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety\\_home.htm](http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm), as amended from time to time. In accordance with 31 U.S.C. 9305(a), the application will include a copy of the applicant’s charter or articles of incorporation and a financial statement, signed and sworn to by its president and secretary, showing its assets and liabilities. A fee shall be transmitted with the application in accordance with the provisions of § 223.22(a)(i).

[79 FR 61999, Oct. 16, 2014]

### § 223.3 Issuance of certificates of authority.

(a)(1)(i) A company submitting an application to be issued a certificate of authority by Treasury to underwrite and reinsure Federal surety bonds must include all required data and information, as determined by Treasury in its discretion, for the application to be complete and ready for review. Upon receipt of a complete application, Treasury will evaluate the submission to determine whether the applicant company:

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(A) Is duly authorized under its charter or articles of incorporation to conduct the business referenced under 31 U.S.C. 9304(a)(2);

(B) Has paid-up capital of at least \$250,000 in cash or its equivalent;

(C) Is solvent and financially and otherwise qualified to conduct the business referenced under 31 U.S.C. 9304(a)(2); and

(D) Is able and willing to carry out its contracts.

(ii) In making the determination whether a company meets these requirements, Treasury will evaluate the application as a whole, the required financial statement(s) submitted by the company, the company's charter or articles of incorporation, the past history of the company, and any further evidence or information that Treasury may require the company to submit (at the company's expense).

(2) If Treasury determines, in its discretion, that the applicant company meets all of these requirements, Treasury will issue a certificate of authority to the company authorizing it to underwrite and reinsure Federal bonds. The certificate of authority will be effective for a term that expires on the last day of the next June. All such statutory requirements and regulatory requirements under this part are continuing obligations, and any certificate is issued expressly subject to continuing compliance with such requirements. The certificate of authority will be renewed annually on the first day of July, *provided* the company remains qualified under the law, the regulations in this part, and other pertinent Treasury requirements, *and* the company submits the fee required under § 223.22 by March 1st of each year to the address and/or account specified by Treasury.

(b) If a company meets the requirements for a certificate of authority as an acceptable surety on Federal bonds in all respects except that it is a United States branch of a company not incorporated under the laws of the United States or of any State, or it is limited by its articles of incorporation or corporate charter to reinsure business only, it may be issued a certificate of authority as a reinsuring company on Federal bonds. The fees for initial

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application and renewal of a certificate as a reinsuring company shall be the same as the fees for a certificate of authority as an acceptable surety on Federal bonds.

[33 FR 8390, June 6, 1968, as amended at 34 FR 20188, Dec. 24, 1969; 37 FR 1232, Jan. 27, 1972; 40 FR 6499 Feb. 12, 1975; 40 FR 8335, Feb. 27, 1975; 42 FR 8637, Feb. 11, 1977; 43 FR 12678, Mar. 27, 1978; 43 FR 39089, Sept. 1, 1978; 49 FR 47002, Nov. 30, 1984; 79 FR 62000, Oct. 16, 2014]

### § 223.4 Deposits.

No such company will be granted authority to do business under the provisions of the act referred to in § 223.1 unless it shall have and maintain on deposit with the Insurance Commissioner, or other proper financial officer, of the State in which it is incorporated, or of any other State of the United States, for the protection of claimants, including all its policyholders in the United States, legal investments having a current market value of not less than \$100,000. The company shall submit to Treasury with its initial application for a certificate of authority, and annually thereafter, a written statement signed by such State official attesting to the current market value of the deposit (not less than \$100,000) and that the legal investments remain on deposit with the State under the terms specified.

[36 FR 9630, May 27, 1971, as amended at 79 FR 62000, Oct. 16, 2014]

### § 223.5 Business.

(a) The company must engage in the business of suretyship whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of the State in which the company is incorporated. It must be the intention of the company to engage actively in the execution of surety bonds in favor of the United States.

(b) No bond is acceptable if it has been executed (signed and/or otherwise validated) by a company or its agent in a State where it has not obtained that State's license to do surety business. Although a company must be licensed in the State or other area in which it executes a bond, it need not be licensed in the State or other area in which the

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principal resides or where the contract is to be performed. The term *other area* includes the Canal Zone, District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

[40 FR 6499, Feb. 12, 1975]

### § 223.6 Requirements applicable to surety companies.

Every company now or hereafter authorized to do business under the act of Congress referred to in § 223.1 shall be subject to the regulations contained in this part.

[38 FR 22779, Aug. 24, 1973]

### § 223.7 Investment of capital and assets.

The cash capital and other funds of every such company must be safely invested in accordance with the laws of the State in which it is incorporated and will be valued on the basis set forth in § 223.9. The Secretary of the Treasury will periodically issue instructions for the guidance of companies with respect to investments and other matters. These guidelines may be updated from time to time to meet changing conditions in the industry.

[42 FR 8637, Feb. 11, 1977]

### § 223.8 Financial reports.

(a) Every company certified under this part will be required to file with the designated Treasury official annual and quarterly statements of its financial condition using the annual and quarterly statement form blanks adopted by the National Association of Insurance Commissioners. The annual and quarterly statements will be signed and sworn to by the company president and secretary. The timeframes and process for submitting the required annual and quarterly statements to Treasury are provided in Treasury's current Annual Letter to Executive Heads of Surety Companies.

(b) Every such company shall furnish such other exhibits or information, and in such manner as the Secretary of the Treasury may at any time require.

[10 FR 2348, Mar. 1, 1945, as amended at 42 FR 8637, Feb. 11, 1977; 49 FR 47002, Nov. 30, 1984; 79 FR 62000, Oct. 16, 2014]

### § 223.9 Valuation of assets and liabilities.

In determining the financial condition of every such company, its assets and liabilities will be computed in accordance with the guidelines contained in the Treasury's current Annual Letter to Executive Heads of Surety Companies. However, the Secretary of the Treasury may value the assets and liabilities of such companies in his discretion. Credit will be allowed for reinsurance in all classes of risks if the reinsuring company holds a certificate of authority from the Secretary of the Treasury, *provided* such reinsuring company is in continuing compliance with all certificate of authority requirements, or has been recognized as an admitted reinsurer in accord with § 223.12.

[42 FR 8637, Feb. 11, 1977, as amended at 79 FR 62000, Oct. 16, 2014]

### § 223.10 Limitation of risk.

Except as provided in § 223.11, no company holding a certificate of authority shall underwrite any risk on any bond or policy on behalf of any individual, firm, association, or corporation, whether or not the United States is interested as a party thereto, the amount of which is greater than 10 percent of the paid-up capital and surplus of such company, as determined by the Secretary of the Treasury. That figure is hereinafter referred to as the underwriting limitation.

[34 FR 20188, Dec. 24, 1969]

### § 223.11 Limitation of risk: Protective methods.

The limitation of risk prescribed in § 223.10 may be complied with by the following methods:

(a) *Coinsurance*. Two or more companies may underwrite a risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company shall limit its liability upon the face of the bond or policy, to a definite specified amount which shall be within its underwriting limitation.

(b) *Reinsurance*. (1) In respect to bonds running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45

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days from the date of execution and delivery of the bond with one or more companies holding a certificate of authority from the Secretary of the Treasury. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45 day period, the direct writing company shall furnish to the Federal agency any necessary reinsurance agreements. However, a Federal agency may, at its discretion, require that reinsurance be obtained within a lesser period than 45 days, and may require completely executed reinsurance agreements to be provided before making a final determination that any bond is acceptable. Reinsurance may protect bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds. Use of reinsurance or coinsurance to protect such bonds is at the discretion of the direct writing company. Reinsurance shall be executed on reinsurance agreement forms: Standard Form 273 (Reinsurance Agreement for a Miller Act Performance Bond), Standard Form 274 (Reinsurance Agreement for a Miller Act Payment Bond), and Standard Form 275 (Reinsurance Agreement in Favor of the United States for other types of Federal bonds). These Standard Forms are available on the General Services Administration Web site at [www.gsa.gov](http://www.gsa.gov).

(2) In respect to risks covered by bonds or policies not running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date of execution and delivery of the bond or policy with:

(i) One or more companies holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds or one or more companies holding a certificate of au-

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thority as an acceptable reinsuring company on such bonds, or

(ii) One or more companies recognized as an admitted reinsurer in accord with § 223.12, or

(iii) A pool, association, etc., to the extent that it is composed of such companies, or

(iv) An instrumentality or agency of the United States which is permitted by Federal law or regulation to execute reinsurance contracts.

(3) No certificate-holding company may cede to a reinsuring company recognized under § 223.12 any risk in excess of 10 percent of the latter company's paid-up capital and surplus.

(c) *Other methods.* In respect to all risks other than Miller Act performance and payment bonds running to the United States, which must be coinsured or reinsured in accord with paragraph (a) or (b)(1) of this section respectively, the excess liability may otherwise be protected:

(1) By the deposit with the company in pledge, or by conveyance to it in trust for its protection, of assets admitted by the Treasury the current market value of which is at least equal to the liability in excess of its underwriting limitation, or

(2) If such obligation was incurred on behalf of or on account of a fiduciary holding property in a trust capacity, by a joint control agreement which provides that the whole or a sufficient portion of the property so held may not be disposed of or pledged in any way without the consent of the insuring company.

[34 FR 20188, Dec. 24, 1969, as amended at 40 FR 6499, Feb. 12, 1975; 41 FR 10605, Mar. 12, 1976; 42 FR 8637, Feb. 11, 1977; 43 FR 39089, Sept. 1, 1978; 79 FR 62000, Oct. 16, 2014]

### § 223.12 Recognition as reinsurer.

(a) *Application by U.S. company.* Any company organized under the laws of the United States or of any State thereof, wishing to apply for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States, shall file the following data with the designated Treasury official, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

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(1) A certified copy of its charter or articles of incorporation, and

(2) A certified copy of a license from any State in which it has been authorized to do business, and

(3) A copy of the latest available report of its examination by a State Insurance Department, and

(4) A statement of its financial condition, as of the close of the preceding calendar year, on the annual statement form of the National Association of Insurance Commissioners, signed and sworn to by two qualified officers of the company, showing that it has a capital stock paid up in cash of not less than \$250,000, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company, and

(5) Such other evidence as Treasury may determine is necessary to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts.

(b) *Application by a U.S. branch.* A U.S. branch of an alien company applying for such recognition shall file the following data with the designated Treasury official, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) The submissions listed in paragraphs (a) (1) through (5) of this section, except that the financial statement of such branch shall show that it has net assets of not less than \$250,000 over and above all liabilities, and

(2) Evidence satisfactory to the Secretary of the Treasury to establish that it has on deposit in the United States not less than \$250,000 available to its policyholders and creditors in the United States.

(c) *Financial reports.* Each company recognized as an admitted reinsurer shall file with the designated Treasury official, on or before the first day of March of each year, its financial statement and such additional evidence as the Secretary of the Treasury determines necessary to establish that the requirements of this section are being met. A fee shall be transmitted with

the foregoing data, in accordance with the provisions of § 223.22.

[34 FR 20189, Dec. 24, 1969, as amended at 37 FR 1232, Jan. 27, 1972; 40 FR 6499, Feb. 12, 1975; 43 FR 12678, Mar. 27, 1978; 49 FR 47002, Nov. 30, 1984; 79 FR 62000, Oct. 16, 2014]

### § 223.13 Full penalty of the obligation regarded as the liability; exceptions.

In determining the limitation prescribed in this part, the full penalty of the obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk which is less than such full penalty, except in the following cases:

(a) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus 10 percent of said amount to cover interest and costs.

(b) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bond or other obligation is fixed in excess of the estimated value of the estate; in which cases the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability.

(c) Credit will also be allowed for indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability.

(d) Contract bonds given in excess of the amount of the contract; in which cases the amount of the contract will be regarded as the liability.

(e) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, whereby any law or decree of a court, the amount to be deposited shall be less than the penalty of the bond; in which cases the maximum amount on deposit at any one time will be regarded as the liability.

[Dept. Circ. 297, July 5, 1922]

### § 223.14 Schedules of single risks.

During the months of January, April, July, and October of each year every company will be required to report to the Secretary of the Treasury every obligation which it has assumed during the 3 months immediately preceding, the penal sum of which is greater than 10 percent of its paid up capital and surplus, together with a full statement

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of the facts which tend to bring it within the provisions of this part, on a form suitable for the purpose.

[Dept. Circ. 297, July 5, 1922]

## § 223.15 Paid up capital and surplus for Treasury rating purposes; how determined.

The amount of paid up capital and surplus of any such company shall be determined on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as the Secretary of the Treasury may deem necessary or proper.

[42 FR 8637, Feb. 11, 1977]

## § 223.16 List of certificate holding companies.

A list of qualified companies is published annually as of July 1 in Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which listed sureties are licensed to transact surety business and other details. If the Secretary of the Treasury shall take any exceptions to the financial statements submitted by a company, he or she shall, before issuing Department Circular 570, give a company due notice of such exceptions. Copies of the Circular are available at <http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>, or from the designated Treasury official, upon request. Bonds underwritten by certified companies on the Department Circular No. 570 list may be presented to an agency bond-approving official for acceptance. Selection of a particular qualified company from among all companies holding certificates of authority is discretionary with the principal required to furnish the bond, but the acceptance of a bond by an agency bond-approving official is subject to § 223.17.

[79 FR 62001, Oct. 16, 2014]

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## § 223.17 Acceptance and non-acceptance of bonds.

(a) *Acceptance of bonds.* A bond underwritten by a certified company on the § 223.16 Department Circular No. 570 list may be presented to any agency-bond approving official for acceptance, and such agency bond-approving official may accept such bonds.

(b) *Non-acceptance of bonds.* (1) An agency bond-approving official may decline to accept bonds underwritten by a certified company for cause, but only if the company has been given advance written notice by such agency. The advance written notice shall:

(i) State the intention of the agency to decline bonds underwritten by the company;

(ii) State the reasons for or cause of the proposed declination of such bonds;

(iii) Provide the opportunity for the company to rebut the stated reasons or cause; and

(iv) Provide the company the opportunity to cure the stated reasons or cause.

(2) The agency may decline to accept bonds underwritten by the company if, after consideration of any submission by the company or failure of the company to respond to the agency's notice, the agency issues a written determination that the bonds should not be accepted, consistent with agency authorities.

(3) The agency shall articulate its procedures and for cause standards for declining to accept bonds in an agency regulation prior to declining any bonds in specific cases. The agency regulation should be subject to notice and comment rulemaking. "For cause" includes, but is not limited to, circumstances when a surety has not paid or satisfied an administratively final bond obligation due the agency. The agency regulation should define when a bond obligation becomes administratively final under the agency's procedures. Existing agency rules or regulations that substantially comply with, or that are consistent with, the requirement to articulate procedures and standards in advance meet the requirements of this paragraph.

(4) Agencies that decline bonds under this section are encouraged to use best

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efforts to ensure that persons conducting business with the agency are aware that bonds underwritten by the particular certified company will not be accepted.

(5) The agency's authority to decline bonds under this section does not apply:

(i) When the underlying obligation or other for cause reason that forms the basis for the agency's written determination to decline bonds under paragraph (b)(2) of this section, or the agency written determination to decline bonds, has been stayed or enjoined by a court of competent jurisdiction, or

(ii) To otherwise acceptable payment and performance contract bonds, when the agency has already accepted a project bid bond on a contract before making the written determination under paragraph (b)(2) of this section.

(6) Notwithstanding any provision of this section, an agency bond-approving official may decline a bond from a Treasury-certified surety without advance notice if the bond is not executed in proper form, or is not in the correct penal sum amount, or is otherwise technically deficient on its face.

[79 FR 62001, Oct. 16, 2014]

### § 223.18 Revocation.

(a) A revocation proceeding against a Treasury-certified company can be initiated by Treasury in either of two ways:

(1) Treasury, of its own accord, under § 223.19, may initiate revocation proceedings against the company when it has reason to believe that the company is not complying with 31 U.S.C. 9304–9308 and/or the regulations under this part, or

(2) Treasury, under § 223.20, may initiate revocation proceedings against the company upon receipt of a complaint from an agency that the company has not paid or satisfied one or more administratively final bond obligations due the agency.

(b) A revocation of a company's certificate of authority under § 223.19 or § 223.20 precludes the company from underwriting or reinsuring additional bonds for the agency, and therefore revokes the company's opportunity to

have its bonds presented to any agency bond-approving official for acceptance.

[79 FR 62001, Oct. 16, 2014]

### § 223.19 Treasury-initiated revocation proceedings.

Whenever Treasury has reason to believe that a company is not complying with the requirements of 31 U.S.C. 9304–9308 and/or the regulations under this part, including but not limited to a failure to satisfy corporate and financial standards, Treasury shall:

(a) Notify the company of the facts or conduct which indicate such non-compliance, and provide the company an opportunity to respond, and

(b) Revoke a company's certificate of authority after providing notice to the company if:

(1) The company does not respond satisfactorily to Treasury's notification of non-compliance, or

(2) The company, provided an opportunity to demonstrate or achieve compliance, fails to do so.

[79 FR 62001, Oct. 16, 2014]

### § 223.20 Revocation proceedings initiated by Treasury upon receipt of an agency complaint.

(a) *Agency complaint.* If an agency determines that a company has not promptly made full payment or fully satisfied one or more bond obligations naming the agency as obligee, the head of the agency, or his or her designee, may submit a written complaint to the designated Treasury official (with executive oversight over the Treasury surety program, at the Assistant Commissioner level or equivalent), requesting that the company's certificate of authority be revoked for nonperformance. Under such complaint, the agency shall certify that:

(1) The bond obligations that are the subject of the complaint are administratively final under the agency's regulations or other authorities;

(2) The company has not paid or satisfied those bond obligations; and

(3) The company's obligation to pay or satisfy the bond obligations has not been stayed or enjoined by a court of competent jurisdiction.

(b) *Documentation of complaint.* The agency shall include in its complaint copies of the bonds, and documentation

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indicating that, for each such bond provided:

(1) The agency has determined the principal is in default on the obligation covered by the bond, consistent with agency authorities, or if the default has been litigated, documentation indicating a court of competent jurisdiction has determined the principal is in default;

(2) The agency made a written demand with the company on the bond requesting payment or satisfaction on its own behalf, consistent with agency authorities, or on behalf of laborers, materialmen, or suppliers (on payment bonds), based on the default status of the principal;

(3) The agency afforded the company the opportunity to request administrative review within the agency contesting the agency's demand on the bond;

(4) The agency made a final administrative determination that the bond obligation was due after the completion of such administrative review, or after the time period for the company to request administrative review within the agency has expired;

(5) The agency provided the company the opportunity to enter into a written agreement to pay or satisfy the bond; and

(6) The company has not made full payment or fully satisfied the demand, and the claim on the bond is past due.

(c) *Notice to company.* On receipt of a complaint meeting the requirements of paragraphs (a) and (b) of this section, Treasury will notify the company of the agency complaint. The notice will require the company to submit a written explanatory response to Treasury within 20 business days of the date of the notice. The notice will advise the company of the facts and conduct referenced in the complaint. Treasury will attach a copy of the incoming complaint to the notice. The notice will afford the company the opportunity to address the complaint and demonstrate its qualifications to retain its certificate of authority.

(d) *Reviewing official and deciding official.* The designated Treasury official (with executive oversight over the Treasury surety program, at the Assistant Commissioner level or equivalent)

will appoint a Treasury Reviewing Official to conduct a review of the agency complaint referenced in paragraphs (a) and (b) of this section, and the company response referenced in paragraph (c) of this section, to determine whether revocation of the company's certificate of authority is warranted. To ensure appropriate consideration of relevant factual or legal issues, the Reviewing Official is authorized to require the submission of additional documentation from the complaining agency and the company. Upon completion of such review, the Reviewing Official shall prepare a written Recommendation Memorandum addressed to the designated Treasury official setting forth findings and a recommended disposition. The designated Treasury official will be the Deciding Official who will make the final decision whether the company's certificate of authority to write and reinsure bonds should be revoked based on the administrative record. The administrative record consists of the agency complaint referenced in paragraphs (a) and (b) of this section, the company response referenced in paragraph (c) of this section, any other documentation submitted to, or considered by, the Reviewing Official, and the Reviewing Official's Recommendation Memorandum.

(e) *Final decision.* (1) If the Deciding Official's final decision is that revocation is not warranted, the company and the agency will be notified of the basis of this decision and the complaint against the company will be dismissed.

(2) If the Deciding Official's final decision is that the company's certificate of authority shall be revoked, the Deciding Official will notify the company and the agency of the revocation decision and the basis for such decision. Except as provided in paragraph (g) of this section, the notice will afford the company an opportunity to cure its noncompliance by paying or satisfying the bonds (including payment of any interest, penalties, and fees) forming the basis of the final decision within 20 business days. If the company cures its noncompliance within 20 business days, the complaint against the company will be deemed moot and the company will retain its certificate of authority



to write Federal bonds. If the company does not cure its noncompliance within 20 business days, the company's certificate of authority shall be revoked by Treasury without further notice.

(f) *Standard of review.* In reviewing whether the revocation of the company's certificate of authority is warranted under this section, the Reviewing Official will recommend, and the Deciding Official will determine, whether the default is clear and whether the company's failure to pay or satisfy the bonds is based on inadequate grounds.

(g) *Consideration of willful conduct.* The company is not entitled to an opportunity to cure its noncompliance if its conduct in failing to carry out its contracts is willful. For purposes of this regulation, "willful" means a careless or reckless disregard of a known legal obligation to satisfy an administratively final bond obligation. In considering whether a company's conduct is willful, the Deciding Official may consider whether:

(1) An agency has filed a prior complaint with Treasury requesting that the company's certificate be revoked for a substantially similar bond obligation;

(2) The company asserted substantially similar defenses to such bond obligation;

(3) Such defenses were considered by the agency under pertinent authorities and dismissed;

(4) Treasury made a final decision that revocation of the company's certificate was justified; and

(5) Other pertinent factors.

(h) *Informal hearing.* (1) If a company that is the subject of a complaint under paragraph (a) and (b) of this section believes the opportunity to make known its views, as provided for under paragraph (c) of this section, is inadequate, it may, within 20 business days of the date of the notice required by paragraph (c), request, in writing, that an informal hearing be convened.

(2) As soon as possible after a written request for an informal hearing is received, the Reviewing Official shall convene an informal hearing, at such time and place as he or she deems appropriate, for the purpose of deter-

mining whether the company's certificate of authority should be revoked.

(3) The company shall be advised, in writing, of the time and place of the informal hearing and shall be directed to bring all documents, records and other information as it may find necessary and relevant to support its position.

(4) The company may be represented by counsel and shall have a fair opportunity to present any relevant material and to examine the administrative record.

(5) The complaining agency may be requested by the Reviewing Official to send a representative to the hearing to present any relevant material, and the agency representative may examine the administrative record.

(6) The Reviewing Official is authorized to require the submission of additional documentation from the complaining agency and the company to ensure appropriate consideration of relevant factual or legal issues.

(7) Formal rules of evidence will not apply at the informal hearing.

(8) The formal adjudication standards under the Administrative Procedure Act, 5 U.S.C. 554, 556, 557 do not apply to the informal hearing or adjudication process.

(9) Treasury may promulgate additional procedural guidance governing the conduct of informal hearings. This additional procedural guidance may be contained in the Annual Letter to Executive Heads of Surety Companies referenced in §223.9, the Treasury Financial Manual, or other Treasury publication or correspondence.

(10) Upon completion of the informal hearing, the Reviewing Official shall prepare a written Recommendation Memorandum addressed to the Deciding Official setting forth findings and a recommended disposition. The Deciding Official will make the final decision whether the company's certificate of authority to write and reinsure Federal bonds should be revoked based on the administrative record. The administrative record consists of the Federal agency complaint referenced in paragraphs (a) and (b) of this section, the company response referenced in paragraph (c), any other documentation submitted to, considered by, or entered into the administrative record by the

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Reviewing Official, the hearing transcript, and the Reviewing Official's Recommendation Memorandum.

(11) The provisions of paragraphs (e), (f), and (g) of this section shall apply to the adjudication of the agency complaint when an informal hearing is conducted.

[79 FR 62002, Oct. 16, 2014]

### § 223.21 Reinstatement.

If, after one year from the date of the non-renewal or the revocation of its certificate of authority under this part, a company can demonstrate that the basis for the non-renewal or revocation has been cured, as determined by Treasury in its discretion, and that it can comply with, and does meet, all continuing requirements for certification under 31 U.S.C. 9304–9308 and this part, the company may submit an application to Treasury for reinstatement or reissuance of a certificate of authority, which will be granted without prejudice, *provided* all such requirements are met.

[79 FR 62003, Oct. 16, 2014]

### § 223.22 Fees for services of the Treasury Department.

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a) (1) through (4) of this section which are performed by the Treasury Department, regardless of whether the action requested is granted or denied. The payee of the check or other instrument shall be the Bureau of the Fiscal Service, Treasury Department. The amount of the fee will be based on which of the following categories of service is requested:

(1) Examination of a company's application for a certificate of authority as an acceptable surety on Federal bonds or for a certificate of authority as an acceptable reinsuring company on such bonds (see § 223.2);

(2) Examination of a company's application for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States (see § 223.12(a) and (b));

(3) Determination of a company's continuing qualifications for annual re-

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newal of its certificate of authority (see § 223.3); or

(4) Determination of a company's continuing qualifications for annual renewal of its authority as an admitted reinsurer (see § 223.12(c)).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service, e.g., determination of a company's continuing qualifications for annual renewal of its certificate of authority. However, the Treasury Department reserves the right to redetermine the amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A–25, as amended.

(c) Specific fee information may be obtained from the designated Treasury official, or online at [http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety\\_home.htm](http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm). In addition, a notice of the amount of a fee referred to in paragraphs (a)(1) through (4) of this section will be published in the FEDERAL REGISTER as each change in such fee is made.

[43 FR 12678, Mar. 27, 1978, as amended at 49 FR 47001, 47002, Nov. 30, 1984; 79 FR 62003, Oct. 16, 2014]

## PART 224—FEDERAL PROCESS AGENTS OF SURETY CORPORATIONS

Sec.

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AUTHORITY: 31 U.S.C. 9306 and 9307.

SOURCE: 71 FR 60848, Oct. 7, 2006, unless otherwise noted.

### § 224.1 What does this part cover?

This part provides guidance on when a surety corporation must appoint a service of process agent and how the