

§ 223.15

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]

31 CFR Ch. II (7–1–23 Edition)

§ 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

Fiscal Service, Treasury

§ 223.20

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 any 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