and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/rulemaking/;* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations-policies/rulemaking/sbre-act/.*

List of Subjects in 14 CFR Part 406

Administrative procedure and review, Commercial space transportation, Enforcement, Investigations, Penalties, Rules of adjudication.

The Amendment

In consideration of the Foregoing, the Federal Aviation Administration amends part 406 of Title 14, Code of Federal Regulations as follows:

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 1. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Amend § 406.9 by revising paragraph (a) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $120,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 51 U.S.C. 50904–50905 in Washington, DC, on September 29, 2014.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–24528 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

RIN 1510–AB27

Surety Companies Doing Business With the United States

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, Bureau of the Fiscal Service (Treasury) administers the Federal corporate surety program. Treasury issues certificates of authority to qualified sureties to underwrite and reinsure Federal bond obligations. Bonds underwritten by Treasury-certified sureties satisfy bonding requirements, provided such bonds are accepted by the agency bond-approving official. Treasury is amending its regulation to expressly provide that an agency may decline to accept a bond underwritten by a Treasury-certified surety for cause, provided the agency satisfies the requirements specified in the final rule. Treasury is also revising the procedures it uses to adjudicate any complaint received from an agency requesting that a surety's certificate of authority be revoked.

DATES: This rule is effective December 15, 2014.

ADDRESSES: You can download this rule at the following Web site: *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm.* You may also inspect and copy this rule at: Treasury Department Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Before visiting, you must call (202) 622–0990 for an appointment.

In accordance with the federal eRulemaking Initiative, the Bureau of the Fiscal Service publishes rulemaking information on *http://www.regulations.gov.*

Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Melvin Saunders, Manager, Surety Bond Branch, Bureau of the Fiscal Service, at (202) 874–6850 or *melvin.saunders@fiscal.treasury.gov,* or James J. Regan, Senior Counsel, Bureau of the Fiscal Service, at (202) 874–6680 or *james.regan@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION: On March 17, 2011, Treasury published a notice of proposed rulemaking (NPRM) at 76 FR 14592, requesting comment on a proposed amendment to 31 CFR part 223 (Part 223), which implements the requirements of 31 U.S.C. 9304–9308.

The NPRM proposed two main amendments to Part 223. First, under NPRM § 223.17, Treasury proposed to clarify the circumstances under which a Federal agency bond-approving official could decline to accept a bond underwritten by a Treasury-certified surety. Second, under NPRM § 223.20, Treasury proposed to clarify the procedures and standard of review to be used by Treasury in adjudicating any complaint submitted by an agency to Treasury requesting that a surety's certificate be revoked.

After consideration of the comments received, Treasury is amending its

regulation to expressly provide that an agency has discretion to decline to accept a bond underwritten by a Treasury-certified surety for cause, provided the agency satisfies the requirements specified in the final rule. Treasury is also revising the procedures it uses to adjudicate any complaint received from an agency requesting that a surety's certificate of authority be revoked.

I. Summary of Comments Received and Treasury's Responses

Treasury sought comments on all aspects of the proposed rule. Treasury received 14 comment letters from a cross-section of entities and individuals associated with the surety industry. Five of these comment letters were submitted by surety companies, four by surety trade associations, three by law firms, and two by individuals. The two individuals work for immigration bonding companies or bonding agencies, but the letters were submitted in their individual capacities.

Thirteen of the commenters submitted comments that were opposed to the NPRM, as written, with several commenters suggesting the NPRM be withdrawn. The commenters who suggested the NPRM be withdrawn expressed the opinion that the current statutes and regulations are adequate to address the collection and performance issues that are of concern to Treasury.

One comment from a national trade association representing construction subcontractors, specialty trade contractors, and suppliers, supported the NPRM. This commenter emphasized that subcontractors working on Federal construction projects ''rely on the payment bonds'' underwritten by Treasury-certified sureties to ensure their final payment. This commenter emphasized that the Federal Government's extra oversight of this issue ''will increase the value of this important payment assurance to subcontractors.''

A. Comments on Proposed § 223.17 and Treasury's Responses

1. Several commenters expressed the opinion that proposed § 223.17 conflicts with 31 U.S.C. 9305(e). Section 9305(e) provides that: ''A surety corporation providing a surety bond under section 9304 of this title [31 U.S.C. 9304] may not provide any additional bond under that section if—(1) the corporation does not pay a final judgment or order against it on the bond; and (2) no appeal or stay of the judgment or order is pending 30 days after the judgment or order is entered.'' These commenters suggest that section 9305(e) provides the only circumstances under which an agency can decline to accept a bond from a surety.

Section 223.17 does not conflict with section 9305(e). Section 9305(e) sets the statutory standard under which a surety's certificate of authority to write any additional bond for any agency is revoked by operation of law for failure to pay a final court judgment or order. In contrast, § 223.17, as articulated in the final rule, clarifies the scope of an agency's existing authority to decline to accept a particular bond or bonds from a surety.

Under 31 U.S.C. 9304(b), and its predecessor derivations, Congress expressly conditioned acceptance of a bond on the approval of a Federal agency bond-approving official. This provision authorizes agencies to decline to accept bonds underwritten by Treasury-certified sureties. In enacting this provision, Congress expressed the general intent that Treasury-certification status does not provide a guarantee to a surety that its bonds will be accepted by an agency in all cases. Federal courts have also recognized that agencies have the discretion to decline acceptance of bonds from Treasury-certified sureties. *See, e.g., Concord Casualty & Surety Co.* v. *United States,* 69 F.2d 78 (2d Cir. 1934); *American Druggists Ins. Co.* v. *Bogart,* 707 F.2d 1229 (11th Cir. 1983).

Several commenters appeared to suggest that a certificate, once granted, gives a surety the right to have its bonds approved in all cases, unless the surety's authority to write bonds is revoked by court order or judgment under 31 U.S.C. 9305(e). This view is incorrect as it fails to give effect to the intent of Congress under section 9304(b).

Moreover, a court judgment or order meeting the requirements of section 9305(e) precludes the surety from writing *any* Federal bond for *any* agency. In contrast, § 223.17 authorizes an agency official to decline bonds presented by a Treasury-certified surety to that agency for cause. The Treasury-certified surety is still authorized to present additional bonds to other agencies.

2. Several commenters expressed the view that Federal agencies often err in making administrative determinations that bond obligations are due and owing. These commenters believe that a court is the proper arbiter of bond disputes because agency administrative practices are allegedly deficient.

Treasury recognizes the importance of fair and accurate administrative processes. However, Treasury does not believe it is necessary or appropriate to require an agency to reduce every surety claim to judgment, or submit a surety revocation complaint to Treasury in every instance, in order to facilitate equitable and efficient resolution of surety performance and collection concerns at the agency level.

Under final rule § 223.17(b), a surety company is provided a series of protections before an agency can decline to accept its bonds. First, the agency must provide advance written notice to the surety and provide the surety with the opportunity to rebut the agency's reasons for declination and the opportunity to cure. Second, the agency must consider any submission by the surety and issue a written determination that the bonds should not be accepted. Third, the agency must issue a regulation pursuant to notice and comment rulemaking that articulates the agency's procedures and for cause standards for declining bonds. Treasury believes that these requirements will improve any agency practices that are allegedly deficient and will provide certified surety companies with adequate due process protections before their bonds can be declined by a particular agency.

If a surety is not satisfied with the agency bond-approving official's decision to decline bonds, the surety may petition a court of competent jurisdiction to stay or enjoin the agency's written determination to decline additional bonds from that surety. § 223.17(b)(5)(i).

3. Several commenters expressed concern that ''administratively final bond obligation'' was not defined in the NPRM for purposes of governing the exercise of agency discretion under § 223.17. One commenter suggested this lack of definition could lead to inconsistent definitions, procedures, and decisions across agencies.

Treasury believes that this determination should be left to the agency that is requiring the bond. Accordingly, final rule § 223.17(b)(3) requires the agency to define in its regulation when a bond obligation becomes administratively final under the agency's procedures.

4. Several commenters expressed concern that an agency bond-approving official could decline additional bonds based on a single bond obligation. One commenter stated the standard was coercive because it could force a surety to capitulate to the agency's demand for payment even if the surety has a good defense on a bond claim. One commenter expressed concern that the proposed rule would allow an agency to decline bonds for a ''single, immaterial, or insignificant delinquency'' rather than requiring that the declination be

limited to a situation where the surety is ''significantly delinquent either in the number of outstanding bills or dollar amounts thereof.''

Treasury expects that agencies will act in good faith when exercising their authority to decline bonds. The agency must provide the Treasury-certified surety with extensive administrative due process protections, as specified in § 223.17(b), prior to declining bonds from that surety.

5. Several commenters engaged in one agency's immigration surety bond business alleged that the agency does not afford sureties with adequate due process in determining when a bond obligation is administratively final and that the agency has a high administrative error rate in declaring bond obligations due. One commenter stated that giving that agency's bond-approving official the discretion not to accept additional bonds under the standards articulated in the proposed rule would give the agency unfettered discretion.

Treasury does not believe it would be appropriate to comment specifically on the allegations made by these commenters on a particular agency's alleged internal processes. We do emphasize, however, that Treasury believes that a fair and equitable administrative process is essential.

Our response to *Comment #2* summarizes the due process protections afforded to sureties under the final rule. The final rule ensures a fair and equitable administrative process, and expressly provides that each agency may exercise the discretion to decline additional bonds under § 223.17(b), only in accordance with the specified requirements.

6. One commenter raised a concern that permitting agencies to define additional ''for cause'' reasons to decline bonds in agency-specific regulations, as provided in proposed § 223.17, would provide extraordinary leverage to agencies that already have allegedly flawed administrative processes. Another commenter raised a concern with the proposed ''for cause'' provision because of its inherent ''lack of specificity and consistency, as well as the potential for misapplication and mis-implementation'' across disparate agencies.

''For cause'' includes circumstances when a surety has failed to pay or satisfy an administratively final bond obligation due the agency. Other ''for cause'' reasons for declining bonds will depend on the particular needs and concerns of each agency. The final rule under § 223.17(b)(3) requires an agency to issue a regulation subject to notice and comment rulemaking before declining any bonds. This requirement will ensure that surety companies have the opportunity to comment on the ''for cause'' reasons proposed by each agency.

7. Two commenters suggested the proposed rule would upset, or undermine, the surety bond contract tripartite relationship in which the surety (secondary obligor) agrees to be answerable to the obligee (Federal agency) for the debt or default of the principal (primary obligor). One of these commenters expressed concern that the proposed rule focuses on the obligation of the secondary obligor (the surety) without first affording the primary obligor (the principal) the right to have its position adjudicated. The commenter suggested this focus could yield inconsistent results if the surety satisfies the Federal agency's bond demand and the principal is required to indemnify the surety, but the principal later defeats the Federal agency's default claim in court.

The final rule in § 223.17(b)(3) requires the agency to articulate its procedures and for cause standards for declining bonds in a regulation subject to notice and comment rulemaking before it can decline bonds from a particular surety. That agency regulation must define when a bond obligation is administratively final. The terms of the final rule do not alter existing tripartite bond contract obligations, but reasonably balance the interests of the parties in determining when additional bonds presented to an agency may be declined.

8. As stated in the NPRM, Federal courts have affirmed that section 9304(b) affords agency bond-approving officials discretion to decline to accept a bond underwritten by a Treasury-certified surety, consistent with the due process standards articulated in the proposed rule. *See, e.g., Concord Casualty & Surety Co.* v. *United States,* 69 F.2d 78 (2d Cir. 1934); *American Druggists Ins. Co.* v. *Bogart,* 707 F.2d 1229 (11th Cir. 1983). One commenter stated that these cases, in dicta, merely stand for the proposition that a bond-approving official could disapprove a particular undertaking in a particular case. One commenter stated this authority is not a basis for the NPRM to authorize agencies to bar a surety on a blanket basis.

Treasury has broad administrative authority over certificate of authority matters. *See Concord,* 69 F.2d at 80–81 (The ''supervision, conduct, and responsibility'' of sureties operating under Treasury-issued certificates of authority is placed with Treasury). In the final rule, Treasury, in the exercise of its discretion, has decided that agency bond-approving officials may decline bonds from a Treasury-certified surety under section 9304(b) for cause. The agency must issue a regulation specifying the procedures and for cause standards for declining bonds. The *Concord* and *American Druggists* cases provide roadmaps for agencies to decline bonds in particular cases, in the absence of specific Treasury guidance. These cases do not limit, and in fact expressly recognize, Treasury's plenary authority to regulate certificates of authority that it issues.

9. One commenter stated that 31 U.S.C. 9305(d)(1) clearly and unambiguously provides that Treasury may revoke the authority of a surety corporation to do new business if the Secretary decides the corporation is insolvent or is in violation of sections 9304, 9305, 9306. The commenter stated that none of these three sections ''authorize a Government agency to reject a bond issued by a surety who has an outstanding unpaid bond obligation that the agency contends is due and owing.''

As explained in the discussion under Comment #1, the discretion of a Federal agency to decline additional bonds underwritten by a Treasury-certified surety, consistent with the requirements of §§ 223.16 and 223.17 in the final rule, is authorized under 31 U.S.C. 9304(b).

10. Several commenters expressed the view that the proposed amendment to part 223 is not necessary as Treasury, in the NPRM, stated it has only recognized a problem with sureties in ''anomalous and rare'' cases. One commenter expressed the view that the proposed changes are excessive and punitive to sureties. Another commenter suggested the proposed changes would create more strife by compelling litigation and parallel administrative practices. This commenter stated ''if the surety has independently investigated the merits of a claim and proceeded in a manner consistent with the outcome of its investigation [e.g., denied the agency's claim], it has acted responsibly and properly, even if it is ultimately determined in subsequent litigation that the surety's decision was incorrect.'' In general, these commenters suggested that the government has adequate recourse against sureties, as sureties are precluded from writing additional bonds if they have not paid a final judgment under the standards of 31 U.S.C. 9305(e).

In the NPRM Treasury stated that the regulatory amendment was necessary to facilitate the prompt resolution of bond disputes between Federal agencies and

sureties. Treasury noted that, in a limited number of cases, sureties appear to have simply ignored agency final decisions for extended periods of time. Treasury stated these ''anomalous and rare'' cases represented an unwelcome burden on the Treasury and the public fisc.

The NPRM proposed to address this concern. Treasury is particularly concerned with situations where a surety underwrites high-volume, low-dollar bonds, and hundreds, even thousands, of bond cases remain unresolved for extended periods of time. The commenters appear to suggest that a Treasury certificate, once granted, gives a surety the unilateral authority to decline every agency bond demand with impunity based on the surety's own internal investigations. These commenters suggest that the agency's recourse is to reduce each bond claim to a judgment; otherwise, the agency is compelled to continue doing business with that surety in all cases.

We disagree with this position. In our view, permitting an agency to decline additional bonds under certain circumstances, as provided in the final rule, may reduce litigation as the agency and surety will have the proper incentive to resolve disputes at the administrative level. Moreover, the discretion afforded to agencies under § 223.17(b) is consistent with, and gives effect to, 31 U.S.C. 9304(b).

11. One commenter expressed concern that the proposed rule would enable an agency to reject bonds from a Treasury-certified surety in accordance with standards in an agency-specific rule or regulation. Another commenter expressed concern that agency-specific standards could lead to inconsistent definitions, procedures, and decisions across agencies.

The agency regulations on declining bonds will be subject to notice and comment rulemaking. Surety companies will have the opportunity to express their concerns directly to the agencies during this process.

12. One commenter expressed concern that an agency's decision to decline payment and performance bonds on a project under proposed § 223.17, after the agency has already accepted a project bid bond underwritten by that same surety, could present contract complications, including a claim on the bid bond, because the principal may not be able to obtain a replacement surety in time.

We agree with the commenter that this sequence of events could present unintended contract complications. The final rule has been amended under § 223.17(b)(5)(ii) to provide that an agency's authority to decline bonds does not apply to otherwise acceptable payment and performance contract bonds, when the agency has already accepted a bid bond from the same surety on the particular project.

13. One commenter recommended proposed § 223.17(b)(3) be amended to require that an agency post notice of any proposed declination of bonds in the **Federal Register** within five days of the date the agency gives the surety written notice of its intention to decline bonds. This commenter also recommended that the proposed declination by the agency be posted by Treasury as an on-line supplement to Department Circular 570.

Section 223.17(b)(4), as provided in the final rule, encourages agencies ''to use best efforts to ensure that persons conducting business with the agency are aware that bonds underwritten by the particular certified company will not be accepted.'' Treasury believes each agency is in the best position to determine how this information should be provided to principals who may be seeking to do business with the agency. We do not believe it is appropriate to publish this information in Department Circular 570, as the surety will still be certified by Treasury to write bonds for any other agency.

14. One commenter asked whether the scope of an agency's authority to decline additional bonds under proposed § 223.17 is intended to permit the agency to also require the replacement of bonds previously accepted by that agency.

Section 223.17, in the final rule, is prospective and is not intended to require a principal to obtain replacement bonds that have already been accepted. In contrast, when Treasury *revokes* the authority of a surety to underwrite bonds for any agency, under 31 U.S.C. 9305(b)–(d) and 31 CFR 223.18–223.20, agencies are advised that they should secure new bonds for bonds currently in force if a significant amount of liability remains outstanding, and that continuous bonds should not be renewed.

15. Several commenters expressed concern that the proposed rule would require a surety to obtain injunctive relief in court in order to prevent the agency from declining additional bonds under the authority of § 223.17. One of these commenters expressed concern that this standard would permit an agency to impose sanctions which eliminate the obligation of the agency to prove its claim in court, *i.e.,* reduce the claim to final judgment. Another commenter recommended that the agency not be permitted to decline additional bonds until the time to seek judicial review has expired or the judicial review has been completed. Another commenter noted that the injunctive relief requirement would result in a need to file and engage in inefficient fast-track litigation.

As noted above in our response to Comment #10, Treasury is of the view that permitting an agency to decline additional bonds, subject to a court of competent jurisdiction granting the surety injunctive relief, as provided in the final rule, may reduce litigation as the agency and surety will have the proper incentive to resolve disputes at the administrative level.

16. One commenter expressed concern that the ''willful conduct'' exception in the proposed rule would provide an agency too much discretion in deciding whether to permit the surety to cure its noncompliance to avoid non-acceptance of its bonds by the agency.

Under § 223.17(b)(1)(iv), as provided in the final rule, a surety has the opportunity to cure its noncompliance to avoid non-acceptance of its bonds by the agency. The ''willful conduct'' exception under § 223.20(g), as proposed and in the final rule, whereby a surety does not have the opportunity to cure its noncompliance in specified circumstances, only applies to Treasury revocation actions. Agencies do not have authority to exercise the ''willful conduct'' cure exception.

17. One commenter suggested that an agency's proposed decision to decline bonds should be submitted to an independent Administrative Law Judge under 5 U.S.C. 556, due to what the commenter describes as the serious nature of the action, the impact on the principal and surety, costs, and potential delays.

The formal adjudication requirements under the Administrative Procedure Act only apply in cases ''required by statute to be determined on the record after an opportunity for an agency hearing.'' 5 U.S.C. 554(a) and 556(a). The authority for an agency to decline additional bonds is established under 31 U.S.C. 9304(b) and 31 CFR 223.17(b). Section 556 procedures are not required because the surety statutes, 31 U.S.C. 9304–9308, do not require a formal adjudication to be determined on the record after an opportunity for a hearing.

18. One commenter suggested the proposed rule should be amended to provide guidance on Treasury's role in assuring that the standards in the rule and in an agency's rules and processes, meet minimum due process standards.

Treasury's final rule establishes requirements that apply to all agencies that exercise discretion under

§ 223.17(b) to decline bonds from Treasury-certified sureties.

B. Comments on Proposed § 223.20 and Treasury's Responses

19. Several commenters expressed concern that under proposed § 223.20 Treasury would not conduct a *de novo* review of an agency's administratively final decision (that the surety owes a past-due bond obligation) when adjudicating the agency's complaint requesting that the surety's certificate be revoked. The NPRM specified that Treasury would review whether the agency's administratively final decision (that the surety owes a past-due bond obligation) was reasonable, based on a consideration of relevant factors, and did not involve a clear error of judgment. The commenters expressed concern this standard of review would not provide sufficient opportunity for the surety to present its case to Treasury.

Treasury has amended § 223.20(f) in the final rule to provide that revocation complaints submitted to Treasury will be adjudicated by determining whether the default is clear and whether the company's failure to pay or satisfy the bonds is based on inadequate grounds. This standard of review retains, in large part, the existing standard under current 31 CFR 223.18. This change addresses the concerns raised by these commenters, and ensures that each surety has a meaningful opportunity to present its position to Treasury before a revocation is made. *Matthews* v. *Eldridge,* 424 U.S. 319, 333 (1976) (Fundamental due process is satisfied when an individual is given the opportunity to be heard at a ''meaningful time and in a meaningful manner'').

The final rule under § 223.20(a)(1) requires that an agency submitting a revocation complaint to Treasury certify that the bond obligation that is the subject of the complaint is administratively final under the agency's regulations or other authorities. In contrast to § 223.17 (which requires an agency to publish a regulation), this means that an agency has the discretion to submit a revocation complaint to Treasury without promulgating a regulation, as long as the bond obligation is administratively final under agency authorities and practices. This flexibility is appropriate due, in part, to the array of due process protections afforded to sureties by Treasury under § 223.20.

Treasury anticipates that its revocation decisions under § 223.20(f) will be subject to judicial review under the ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'' standard set forth in 5 U.S.C. 706(2)(A). This is the judicial review standard of informal agency actions, including agency adjudications where no hearing or formal evidentiary standard is required by statute. *Camp* v. *Pitts,* 411 U.S. 138, 142 (1973); *Castillo* v. *Army & Air Force Exchange Serv.,* 849 F.2d 199, 203, n. 1 (5th Cir. 1988) (reasoning that the arbitrary and capricious test of section 706(2)(A) is the appropriate standard for review of an administrative decision when an informal hearing is held or required, but not pursuant to statute).

20. Several commenters stated Treasury can only revoke a surety's certificate of authority to write Federal bonds if the surety fails to pay a final judgment on a bond that has not been stayed or appealed under 31 U.S.C. 9305(e). One commenter stated that proposed § 223.20 was an impermissible attempt to amend 31 U.S.C. 9305(e).

As detailed above in our responses to *Comments #1 and #8,* Congress granted to Treasury the administrative authority and responsibility to issue, regulate, and revoke certificates of authority to write Federal bonds. This broad authority is codified in 31 U.S.C. 9305(a)–(d). Section 9305(e) sets a statutory revocation standard that applies by operation of law when a surety fails to pay a final court judgment or order, without substantive review of the underlying dispute by Treasury. It does not preclude Treasury, as licensor, from establishing an administrative revocation standard based on its independent authority to do so under section 9305(a)–(d). Treasury's existing administrative revocation standards have been codified in regulations for many decades. For example, the source authorities for current 31 CFR 223.18–223.20 were published in the **Federal Register** as early as 1969, 1973, and 1977. Here, Treasury, in the reasonable exercise of its administrative discretion, has decided to update its existing administrative revocation standard under 31 CFR 223.20, as provided in the final rule.

21. Proposed § 223.20(c) provided that Treasury, on receipt of an agency complaint meeting the stated requirements, will notify the surety that its certificate ''will'' be revoked in the absence of a satisfactory explanation. One commenter suggested this provision should be amended to provided that Treasury ''may'' revoke the certificate, which is the standard provided in the current regulation.

The final rule has been amended under § 223.20(c) to provide that Treasury will notify the surety of the agency complaint, and the notice will afford the surety the opportunity to address the complaint and demonstrate its qualifications to retain its certificate. The resolution of the complaint by Treasury is governed by § 223.20.

22. One commenter expressed concern that the formal rules of evidence and the formal adjudication standards provided by the Administrative Procedure Act would not apply to the informal hearing afforded to a surety under proposed § 223.20(f) and (h)(6) and (7).

The formal adjudication standards under the Administrative Procedure Act only apply in cases ''required by statute to be determined on the record after an opportunity for an agency hearing.'' 5 U.S.C. 554(a). As discussed in our response to Comment #17, the surety statutes, 31 U.S.C. 9304–9308, do not require a formal adjudication to be determined on the record after an opportunity for a hearing.

23. Several commenters suggested that the administrative revocation standards under proposed § 223.20 should be amended to provide a surety more due process before Treasury makes a revocation decision. Some commenters suggested the final rule be amended to provide the surety an opportunity for a trial-like evidentiary hearing in § 223.20 revocation actions.

Fundamental due process is satisfied when an individual is given notice and the opportunity to be heard at a ''meaningful time and in a meaningful manner.'' *Matthews* v. *Eldridge,* 424 U.S. 319, 333 (1976). Section 223.20 in the final rule provides a panoply of due process protections to ensure compliance with this standard. Before Treasury commences a revocation action, the agency must certify to Treasury that the bond obligations that are the subject of the complaint are administratively final under the agency's regulations or other authorities. § 223.20(a)(1). The agency must submit documentation to Treasury supporting the complaint. § 223.20(b). In addition, the agency must certify that the surety's obligation to pay the bonds has not been stayed or enjoined by a court of competent jurisdiction. § 223.20(a)(3).

Upon receipt of the complaint, Treasury notifies the surety of the facts and conduct referenced in the complaint, and provides the surety the opportunity to demonstrate its qualifications to retain its certificate. § 223.20(c). Treasury affords the surety the opportunity to request an informal hearing. § 223.20(h)(1). If an informal hearing is requested, Treasury provides the surety with written notice of the time and place of the hearing, directs

the surety to bring all documents necessary and relevant to support its position, offers the surety the opportunity to be represented by counsel at the hearing, and affords the surety the opportunity to present any relevant material and to examine the administrative record. § 223.20(h)(2), (3) and (4). The complaining agency may be requested to send a representative to the hearing to present any relevant material. § 223.20(h)(5). The Treasury Reviewing Official is authorized to require the submission of additional documentation from the complaining agency and the surety to ensure appropriate consideration of relevant factual or legal issues. § 223.20(h)(6). The Treasury Reviewing Official prepares a written recommendation to the Treasury Deciding Official setting forth findings and a recommended disposition. § 223.20(h)(10). The Treasury Deciding Official makes the final decision based on the specified administrative record, which includes documentation submitted by the surety. § 223.20(h)(10).

Due process is flexible ''and calls for such procedural protections as the particular situation demands.'' *Matthews,* 424 U.S. at 334 (internal citations omitted). A surety's protected interest in its certificate of authority to write Federal bonds ''is indeed narrow.'' *American Druggists Ins. Co.* v. *Bogart,* 707 F.2d 1229, 1235 (11th Cir. 1983). Given this narrow interest, rudimentary due process requires ''notice reasonably calculated to apprise the surety of the charge of unreliability, and an opportunity to rebut that charge.'' *Id.* at 1237. The protections in § 223.20, as provided in the final rule, are more than adequate to satisfy the process required.

C. General Comments on the NPRM and Treasury's Responses

24. One trade association, whose members underwrite Federal bonds on which the Customs and Border Protection (CBP) agency is the obligee, expressed the opinion that CBP-specific authorities set a higher standard for actionable surety delinquency and due process standards than the proposed rule. The commenter suggested that Treasury should adopt the CBP standards, or clarify that the Treasury final rule does not take precedence over CBP standards in the context of customs bonds.

CBP has promulgated, under its own specific authority, a regulation that governs when CBP is authorized to decline additional customs bonds from a surety when a surety is in default on a customs bond. *See, e.g.,* 19 U.S.C. 66, 1623, 1624; 19 CFR 113.38. Given the CBP specific authority, the Treasury final rule under § 223.17(b) does not supersede or take precedence over the CBP regulation. However, Treasury declines to accept the CBP standards for government-wide application; therefore, CBP surety bond regulations do not apply to surety bonds presented to, or accepted by, other agencies.

25. The trade association whose members write Federal customs bonds on which the CBP agency is the obligee, recommended that the final rule enhance the CBP-specific regulation in several ways.

Treasury is not in a position to amend a CBP-specific regulation, and declines to do so. Instead, Treasury has considered whether the suggestions made by this commenter are appropriate for the Treasury regulation and has amended the final rule, as appropriate.

26. Two commenters suggested the proposed rule was a ''significant regulatory action'' which should be subject to additional regulatory review procedures under Executive Order 12866. One of these commenters suggested if an agency declines to accept bonds from a Treasury-certified surety, or if Treasury revokes a surety's certificate, it will have an effect on the economy of $100 million or more, depending on which surety is involved.

Treasury has determined that the proposed regulation will not have an effect on the economy of $100 million or more because of the rule's limited scope. Federal bond-approving officials already have statutory authority under 31 U.S.C. 9304(b) to determine which bonds proffered by Treasury-certified sureties are acceptable. Section 223.17(b) of the final rule provides that an agency bond-approving official may decline bonds from a Treasury-certified surety for cause, provided the due process standards are met. This provision does not impact a Treasury-certified surety's authority to underwrite bonds that are presented to other Federal agencies for acceptance. Under final rule 31 CFR 223.17(b)(5)(i), the agency declination authority does not apply when the ''for cause'' basis or reason has been stayed or enjoined by a court of competent jurisdiction. In addition, Treasury already has existing authority under current 31 CFR 223.18 to revoke a surety's certificate of authority based on a complaint received from an agency; *see also* 31 U.S.C. 9305(d)(1) (example of Treasury's revocation authority). The final rule under 31 CFR 223.20 updates the procedures used by Treasury to adjudicate agency revocation complaints. Final rule 31 CFR 223.20(a)(3) requires an agency submitting a revocation complaint to Treasury to certify that the bond obligations which are the subject of the complaint have not been stayed or enjoined by a court of competent jurisdiction.

27. One commenter suggested that the NPRM 60-day comment period should be extended to ensure a sufficient number of responses are received.

The publication of the NPRM in the **Federal Register**, including the 60-day notice and comment period, resulted in the submission of 14 comment letters to Treasury. These letters, which were submitted by individuals and a cross-section of the industry, included substantive and thorough comments on a broad range of issues associated with the proposed rule. The 60-day notice and comment period gave interested parties the opportunity to participate in the rulemaking, consistent with 5 U.S.C. 553(b)(c).

28. One commenter expressed concern that Federal contractors would be impacted by the revocation of surety certificates of authority under the NPRM. This commenter emphasized that it takes time for a contractor, particularly a small and emerging contractor, to develop a relationship with a surety, and if a surety's certificate is revoked under the terms of the proposed rule, such a contractor may not be able to find a replacement in time to qualify for Federal work. This commenter noted this could cause the contractor to fail and may have the effect of lessening competition on agency contracts.

Treasury certifies sureties for the primary purpose of ensuring that a Federal agency's position is protected in the event of a default by a principal. This purpose is not furthered by a surety that fails to satisfy bond obligation(s), or whose certificate of authority is revoked by Treasury, as provided in § 223.20. Section 223.17(b)(5)(ii) of the final rule mitigates against undue impact on Federal contractors by providing that an agency's authority to decline additional bonds does not apply to proffered payment and performance contract bonds, when the agency has already accepted a bid bond from the principal on the same project. Moreover, the surety is given the right to cure to avoid agency declination of bonds under § 223.17(b)(1)(iv), and, in general, is given the right to cure to avoid revocation of its certificate by Treasury under § 223.20(e)(2).

29. One commenter requested the opportunity to provide testimony on the NPRM if Treasury conducts hearings on the proposed revisions.

The 60-day notice and comment period gave interested parties the opportunity to participate in the rulemaking, consistent with 5 U.S.C. 553(b)(c). Treasury received 14 comment letters from individuals and a cross-section of the industry. These letters included substantive and thorough comments on a broad range of issues associated with the proposed rule. Treasury has considered and addressed these comments, as reflected in the final rule, and Treasury does not believe it would be further informed by conducting a hearing on the NPRM. A hearing is not required. 5 U.S.C. 553(b)(c).

II. Section-by-Section Analysis

Section 223.1

Revised § 223.1 states, in plain language, that Part 223 governs the issuance and revocation of certificates of authority of surety companies to do business with the United States as sureties on, or reinsurers of, Federal surety bond obligations, and the acceptance of such obligations. The final rule deletes archaic language and clarifies that the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), acts on behalf of the Secretary of the Treasury in performing these duties.

Section 223.2

Revised § 223.2 provides that applications for certificates of authority should be submitted to Treasury at the location, and in the manner, specified online at *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm,* as amended from time to time.

Section 223.3

Section 223.3(a) establishes, in part, the requirements that must be met by an applicant company in order to be issued a certificate of authority by Treasury. Revised § 223.3(a) restates such requirements in plain language. In addition, the final rule clarifies that any certificate issued by Treasury is expressly subject to continued compliance by the surety with all statutory requirements and the other conditions referenced in this part.

Section 223.4

Revised § 223.4 provides that no company will be issued a certificate of authority by Treasury unless it maintains on deposit with the insurance commissioner of the State in which it is incorporated, or other specified State official, legal investments having a current market value of $100,000 or more, for the protection of claimants, including the surety's policyholders in the United States. Revised § 223.4 adds a sentence requiring a company to submit to Treasury with its initial application for a certificate of authority, and annually thereafter, a written statement signed by the State official attesting to the current market value of the deposit and that the legal investments remain on deposit with the State.

Section 223.8

Section 223.8 requires Treasury-certified sureties to file annual and quarterly financial reports to Treasury for review. Revised § 223.8(a) updates the specified Treasury official to whom these reports should be submitted. Revised § 223.8(a) specifies that the reports must be submitted using the annual and quarterly statement blanks adopted by the National Association of Insurance Commissioners.

Section 223.9

Section 223.9 establishes the criteria by which Treasury values the assets and liabilities of a company for certificate of authority purposes. Revised § 223.9 provides that Treasury will allow credit for reinsurance in all classes of risk if the reinsuring company holds a certificate of authority from Treasury, or has been recognized as an admitted reinsurer by Treasury. Revised § 223.9 clarifies that this credit for reinsurance will be allowed only if the reinsurer is in continued compliance with all certificate of authority requirements.

Section 223.11

Revised § 223.11(b) provides that a surety can underwrite a Federal bond in excess of its underwriting limitation if the excess amount is reinsured by a company holding a certificate of authority issued by Treasury, provided the specified reinsurance requirements are met. Revised § 223.11(b) states that the requisite reinsurance bond forms are available on the General Services Administration Web site at *www.gsa.gov.*

Section 223.12

Section 223.12 establishes the application requirements and standards for a company to be recognized by Treasury as an admitted reinsurer (except on excess risks running to the United States) for surety companies doing business with the United States. When a Treasury-certified surety cedes non-Federal risks to an admitted reinsurer, Treasury will credit the surety for the ceded reinsurance when valuing its assets and liabilities, provided applicable requirements are met. Revised § 223.12 updates the specified Treasury official to whom applications and reports pertaining to admitted reinsurer status should be submitted.

Section 223.16

Revised § 223.16 adds two new sentences to the end of this subpart. These sentences clarify that Treasury-certified companies have the opportunity to present their bonds to an agency bond-approving official for acceptance, but that the actual acceptance of a bond by an agency bond-approving official is subject to revised § 223.17.

Section 223.17

Revised § 223.17(a) provides that a Treasury-certified company may present its bonds to any agency bond-approving official for acceptance, and that such bond-approving official may accept such bonds.

Revised § 223.17(b)(1) provides that an agency bond-approving official may decline bonds from a Treasury-certified surety for cause, provided the agency gives advance written notice to the agency.

Revised 223.17(b)(2) provides that the agency may decline bonds after consideration of any submission by the company and after a written determination by the agency to decline the bonds that is consistent with agency authorities.

Revised § 223.17(b)(3) requires the agency to issue a regulation articulating the agency's procedures and for cause standards for declining to accept bonds. The regulation should define when a bond obligation becomes administratively final under the agency's procedures.

Revised § 223.17(b)(4) encourages agencies to ensure that persons conducting business with the agency are aware that bonds from a particular certified company will not be accepted.

Revised § 223.17(b)(5) provides that the agency's authority to decline bonds does not apply to bonds where the underlying obligation or other for cause reason that forms the basis for the declination has been stayed or enjoined by a court of competent jurisdiction, or to payment and performance contract bonds when the agency has already accepted a bid bond from the company on a particular project.

Revised § 223.17(b)(6) provides that an agency bond-approving official may decline a bond from a Treasury-certified surety without advance notice to the surety if the bond is not executed in proper form, or is not in the correct penal sum amount, or is otherwise technically deficient.

Section 223.18

Revised § 223.18 states that revocation of a surety's certificate of authority by Treasury can occur in two ways. First, Treasury can initiate a revocation proceeding on its own initiative under final rule § 223.19 when it has reason to believe that a surety is not complying with 31 U.S.C. 9304–9308 and/or Part 223. Second, Treasury can initiate a revocation proceeding under final rule § 223.20 upon receipt of a complaint from an agency meeting the requirements of that section.

Section 223.19

Revised § 223.19 states the process by which Treasury initiates proceedings on its own accord to revoke a surety's certificate of authority for failure to meet the requirements of 31 U.S.C. 9304–9308 and/or Part 223.

Section 223.20

Revised § 223.20 specifies the process for an agency to submit a complaint to Treasury requesting that a certified surety's certificate of authority be revoked for failure to pay or satisfy one or more administratively final bond obligations. Under revised § 223.20(a)(1), the agency submitting the complaint to Treasury must certify that the bond obligations that are the subject of the complaint are administratively final under the agency's regulations or other authorities. The agency must also certify to Treasury that the obligation to pay or satisfy the bond obligations has not been stayed or enjoined by a court. § 223.20(a)(3).

Revised § 223.20(c) and (d) afford the surety the opportunity to demonstrate its qualifications to retain its certificate, and establish the role of the Treasury Reviewing Official and the Treasury Deciding Official in the adjudicative process.

Revised § 223.20(f) provides that revocation complaints will be adjudicated by Treasury based on a determination whether the default is clear and whether the surety's failure to pay or satisfy the bonds is based on inadequate grounds.

Revised § 223.20(h) retains the right of a surety to request an informal hearing before Treasury makes its revocation decision. The final rule specifies the procedures under which such an informal hearing would be conducted. Under the final rule, the formal adjudication standards of the Administrative Procedure Act (APA), 5 U.S.C. 554, 556, 557 do not apply to the informal hearing or adjudication process.

In the event that Treasury sustains the agency's complaint and makes a decision that the surety's certificate should be revoked, revised § 223.20(e)(2) provides a surety will be afforded an opportunity to cure the noncompliance to avoid decertification, unless its noncompliance is ''willful.'' Revised § 223.20(g) articulates the scope and application of the willful exception to the cure opportunity.

Section 223.21

Revised § 223.21 provides that a surety whose certificate of authority has been revoked or not renewed by Treasury can apply for reissuance of a certificate of authority after one year. Among other things, such a surety must demonstrate as a condition of reinstatement that the basis for the non-renewal or revocation of its certificate has been eliminated. Under revised § 223.21 the determination of whether the basis for the non-renewal or revocation has been eliminated or effectively cured will be made by Treasury in its discretion.

DERIVATION CHART FOR REVISED PART 223

Old section	New section
.....	223.17
223.17	223.18
.....	223.19
223.18	223.20
223.19	223.20
223.20	223.20
223.21	223.21
223.22	223.22

III. Procedural Analysis

Regulatory Planning and Review

The final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. Treasury-certified sureties have an existing obligation to make payment on bond obligations to ensure acceptance of their bonds by agency bond-approving officials under 31 U.S.C. 9304(b). The rule merely codifies this existing obligation in the regulation and clarifies that Federal agencies can decline to accept bonds underwritten by Treasury-certified sureties for cause. In addition, the final rule revises the existing procedures and standard of review that will be used by Treasury in adjudicating revocation complaints submitted by agencies. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 223

Administrative practice and procedure, Surety bonds.

For the reasons set out in the preamble, 31 CFR part 223 is amended to read as follows:

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

■ 1. Revise the authority citation for part 223 to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 9304–9308.

■ 2. Revise § 223.1 to read as follows:

§ 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.

■ 3. Revise § 223.2 to read as follows:

§ 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,* 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).

■ 4. In § 223.3, revise paragraph (a) to read as follows:

§ 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:

(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.

* * * * *

■ 5. In § 223.4, add a sentence to the end of the section to read as follows:

§ 223.4 Deposits.

* * * 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.

■ 6. In § 223.8, revise paragraph (a) to read as follows:

§ 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.

* * * * *

■ 7. In § 223.9, revise the last sentence to read as follows:

§ 223.9 Valuation of assets and liabilities.

* * * 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.

■ 8. In § 223.11, revise paragraph (b)(1) to read as follows:

§ 223.11 Limitation of risk: protective methods.

* * * * *

(b) *Reinsurance.* (1) In respect to bonds 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 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.*

* * * * *

■ 9. In § 223.12, revise paragraph (a) introductory text, paragraph (a)(5), paragraph (b) introductory text, and paragraph (c) to read as follows:

§ 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:

* * * * *

(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:

* * * * *

(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.

■ 10. Revise § 223.16 to read as follows:

§ 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.

§§ 223.18 through 223.20 [Removed]

■ 11. Remove §§ 223.18, 223.19, and 223.20.

§ 223.17 [Redesignated as § 223.18]

■ 12. Redesignate § 223.17 as § 223.18.

■ 13. Add a new § 223.17 to read as follows:

§ 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 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.

■ 14. Revise newly redesignated § 223.18 to read as follows:

§ 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.

■ 15. Add new § 223.19 to read as follows:

§ 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.

■ 16. Add new § 223.20 to read as follows:

§ 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 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 determining 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 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.

■ 17. Revise § 223.21 to read as follows:

§ 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.

■ 18. In § 223.22, revise paragraph (c) to read as follows:

§ 223.22 Fees for services of the Treasury Department.

* * * * *

(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.* 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.

Dated: October 2, 2014.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2014–24460 Filed 10–15–14; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0629; FRL–9917–69–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; State Boards Requirements

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The SIP revision addresses the State Boards' requirements for all criteria pollutants of the National Ambient Air Quality Standards (NAAQS). EPA is also approving a related infrastructure element from Pennsylvania's September 24, 2012 SIP submittal for the 2008 Lead NAAQS. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on December 15, 2014 without further notice, unless EPA receives adverse written comment by November 17, 2014. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0629 by one of the following methods:

A. *www.regulations.gov.* Follow the online instructions for submitting comments.

B. *E-Mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0629, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0629. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless