

close of business on the date requested provided the corporate surety power of attorney is received 5 days before the date requested; otherwise the revocation will be effective at the close of business 5 days after the request is received at the port office.

(5) *Change on the power of attorney.* No change shall be made on the Customs Form 5297 after it has been approved by Customs except the following: (i) Grantee name change, (ii) grantee address change, and (iii) the addition of port(s) to the corporate surety power of attorney on file. To make any other change to the power of attorney two separate Customs Forms 5297 shall be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 95-77, 60 FR 50020, Sept. 27, 1995]

§ 113.38 Delinquent sureties.

(a) *Acceptance as surety when in default as principal on another Customs bond.* No person shall be accepted as surety on any Customs bond while in default as principal on any other Customs bond.

(b) *Acceptance as surety when in default as surety on another Customs bond.* A surety on a Customs bond which is in default may be accepted as surety on other Customs bonds only to the extent that the surety assets are unencumbered by the default.

(c)(1) *Nonacceptance of bond by port director.* A port director may refuse to accept a bond secured by an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the port director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred he should request internal advice under the provisions of §177.11 from the Director, International Trade Compliance Division, Customs Headquarters.

(2) *Nonacceptance of bond upon instructions by Commissioner.* The Commissioner may, when he believes the circumstances warrant, issue instructions to the port directors that they shall not accept a bond secured by an

individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof.

(3) *Notice of surety.* The appropriate Customs officer may take the above actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(4) *Review and final decision.* After a review of any submission made by the surety under paragraph (c)(4) of this section, if the appropriate Customs officer is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision shall be provided to the surety in person or by certified mail, return receipt requested, at least five days before the date that Customs will no longer accept the bonds of the surety. When notice is sent to the surety of the decision not to accept the surety's bonds the appropriate Customs officer shall notify the Director, International Trade Compliance Division, Customs Headquarters. Notice shall be given to the importing public by posting a copy of the decision in the customhouse. The decision shall also be published in the Customs Bulletin.

(5) *Duration of decision.* Any decision not to accept a given surety's bond shall remain in effect for a minimum of five days or until all outstanding delinquencies are resolved, whichever is later.

(6) *Actions consistent with requirements.* Any action not to accept the bonds of a surety under paragraphs (c) (1) and (2) of this section shall be consistent with the requirements of this section.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a port director or Fines, Penalties, and Forfeitures Officer is unsatisfied with a surety company because the

company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the port director may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) *Report to Headquarters.* A port director or Fines, Penalties, and Forfeitures Officer shall send the following evidence to Headquarters, Attn: Director, International Trade Compliance Division.

- (1) A copy of the bond in issue;
- (2) A copy of the entry or other evidence which shows that there was a default on the bond;
- (3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;
- (4) A copy of all correspondence from the surety company; and
- (5) A written report of the facts known to the port director or Fines, Penalties, and Forfeitures Officer showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, International Trade Compliance Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by §223.18(a), Bureau of Government Financial Operations Regulations (31 CFR 223.18(a)). The port director and Fines, Penalties, and Forfeitures Officer will be informed in writing of Headquarters action regarding their request for removal of the surety.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provision.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or

the Commissioner of Customs is authorized to enforce, the port director is authorized to accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell United States obligations on default.* At the time of deposit of any obligation of the United States, other than United States money, with the port director or other appropriate Customs officer, the obligor shall deliver a duly executed power of attorney and agreement authorizing the port director or other appropriate Customs officer, as, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

POWER OF ATTORNEY AND AGREEMENT

(FOR CORPORATION)

—, (name of corporation) a corporation duly incorporated under the laws of the State of —, and having its principal office in the City of —, State of —, as authorized by a resolution of the board of directors of the corporation, passed on the — day of —, 19—, a duly certified copy of which is attached, does constitute and appoint — (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name of the corporation to collect or to sell, assign, and transfer the securities described as follows:

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of —, 19—, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof at public or private sale, without notice, free from any