

§ 113.38

19 CFR Ch. I (4-1-06 Edition)

under the laws of the State of ___ and having its principal place of business at ___ (address), as sureties, and ___ (name of principal), as principal, are jointly and severally obligated to the United States in the amount of ___ (\$) on a bond executed on ___ (date of execution) with each surety jointly and severally obligate with the principal in the amounts listed below and no more:

- ___ (name of surety) ___ (\$)
___ (name of surety) ___ (\$)

By this agreement the principal and sureties bind themselves and agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this agreement and the bond under which they are obligated and which is incorporated by reference into this agreement, shall be treated as the joint and several as well as the several obligation of each of the parties.

Signed and sealed this ___ day of ___ 19 ___
Principal
Surety
Surety
Port Director (Drawback Office)

(g) Power of attorney for the agent or attorney of the surety. Corporations may execute powers of attorney to act in their behalf in the following manner:

- (1) Execution and contents. The corporate surety power of attorney shall be executed on Customs Form 5297, and shall contain the following information:
(i) Corporate surety name and number,
(ii) Name and address of agent or attorney, and social security number of agent or attorney,
(iii) Port(s) where the agent or attorney is authorized to act,
(iv) Date of execution of power of attorney,
(v) Seal of the corporate surety,
(vi) Signature of any two principal officers of corporation, and
(vii) Dollar amount of authorization.

(2) Filing. The corporate surety power of attorney executed on Customs Form 5297 shall be filed with Customs. The original(s) of the corporate surety power of attorney shall be retained at the port where it(they) was(were) filed.

(3) Use at port where power of attorney not filed before receipt of computer print-out. If the grantee desires to use the power of attorney at a port covered by the power of attorney, other than the one where the power of attorney was

filed, before the first computer print-out reflecting this power of attorney is received, the Customs Form 5297, shall be filed in triplicate (original and two copies), rather than duplicate. The second copy shall be validated by Customs and returned to the grantee. The grantee, at the time of filing a bond at a port other than the port where the power of attorney was filed, shall provide this validated copy of the power of attorney as proof of the grant of authority. The validity of this copy of the power of attorney shall expire when the first computer printout reflecting this power of attorney is received.

(4) Term and revocation. Corporate surety powers of attorney shall continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of a power of attorney must execute a revocation on Customs Form 5297. The revocation shall take effect on the 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)(3) 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; T.D. 99-64, 64 FR 43266, Aug. 10, 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