

**§ 113.36**

**19 CFR Ch. I (4–1–10 Edition)**

sureties on the bond, unless the port director is satisfied that one surety is sufficient to protect the revenue and insure compliance with the law and regulations.

(b) *Qualifications to act as surety*—(1) *Residency and citizenship.* Each individual surety on a Customs bond must be both a resident and citizen of the United States.

(2) *Married women.* A married woman may be accepted as a surety, unless the state in which the bond is executed prohibits her from acting in that capacity.

(3) *Granting of power of attorney.* Any individual other than a married woman in a state where she is prohibited from acting as a surety may grant a power of attorney to sign as surety on Customs bonds. Unless the power is unlimited, all persons to which the power relates shall be named.

(4) *Property requirements.* Each individual surety must have property available as security within the limits of the port where the contract of suretyship is to be approved. The current market value of the property less any encumbrance must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) *Oath and evidence of solvency.* Before being accepted as a surety, the individual shall:

(1) Take an oath on Customs Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and the location of one or more pieces of real estate owned within the limits of the port and the value thereof over and above all encumbrances.

(2) Produce such evidence of solvency and financial responsibility as the port director may require.

(d) *Determination of financial responsibility.* An individual surety shall not be accepted on a bond until the port director is satisfied as to the financial responsibility of the individual. The port director may refer the matter to the

special agent-in-charge for immediate investigation to verify the financial responsibility of the surety.

(e) *Continuancy of financial responsibility.* In order to follow the continued solvency and financial responsibility of individual sureties, the port director shall require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every 6 months, and more often if deemed advisable.

**§ 113.36 Partner acting as surety on behalf of a partner or on behalf of a partnership.**

A member of a partnership shall not be accepted as an individual surety on a bond executed by the partnership as principal. A partner may be an individual surety for a fellow partner on a bond if (a) the transaction is in an individual capacity and unrelated to the partnership, (b) sufficient unencumbered nonpartnership property is available as security, and (c) the individual qualifies as an individual surety under the provisions of § 113.35 of this part.

**§ 113.37 Corporate sureties.**

(a) *Lists of corporations and limits of their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. Unless otherwise directed by the Commissioner of Customs, no corporation shall be accepted as surety on a bond if not named in the current Circular as amended by FEDERAL REGISTER notice and no bond shall be for a greater amount than the respective limit stated in the Circular, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11).

(b) *Name of corporation on the bond.* The name of a corporation executing a Customs bond, as a surety, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(c) *Name of agent or attorney on the bond.* The agent or attorney acting for a corporate surety shall have stamped,

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printed, or typed on each bond executed by him, below his signature, his full name as it appears on the bond.

(d) Social security number of agent or attorney on the bond. In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney shall place his/her social security number, as it appears on the corporate surety power of attorney.

(e) Signature and seal of the corporation on the bond. A bond executed by a corporate surety shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in §113.25.

(f) Two or more corporate sureties as sureties on the same obligation. Two or more corporate sureties may be accepted as sureties on any obligation the amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. The amount for which each corporate surety may act as surety in all cases must be within the limitation prescribed by the Secretary, unless the excess is protected as prescribed in §223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11). Each corporate surety shall limit its liability to a definite specified amount, in terms, upon the face of the bond by attaching the following:

CORPORATE SURETIES AGREEMENT FOR LIMITATION OF LIABILITY

\_\_\_\_ (name of surety), \_\_\_\_ (surety code), a surety company incorporated under laws of the State of \_\_\_\_, authorized to conduct a surety business in the State of \_\_\_\_, and having its principal place of business at \_\_\_\_ (address), and \_\_\_\_ (names of surety), \_\_\_\_ (surety code), a surety company incorporated 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, Border Security and Trade Compliance Division, CBP 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 CBP 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 CBP 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 CBP officer shall notify the Director, Border Security and Trade Compliance Division, CBP 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)