

## §210.68

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### §210.68 Complainant's temporary relief bond.

(a) In every investigation under this part involving a motion for temporary relief, the question of whether the complainant shall be required to post a bond as a prerequisite to the issuance of such relief shall be addressed by the parties, the presiding administrative law judge, and the Commission in the manner described in §§210.52, 210.59, 210.61, 210.62, and 210.66. If the Commission determines that a bond should be required, the bond may consist of one or more of the following:

(1) The surety bond of a surety or guarantee corporation that is licensed to do business with the United States in accordance with 31 U.S.C. 9304-9306 and 31 CFR parts 223 and 224;

(2) The surety bond of an individual, a trust, an estate, or a partnership, or a corporation, whose solvency and financial responsibility will be investigated and verified by the Commission; or

(3) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR part 225, which is owned by the complainant and tendered in lieu of a surety bond, pursuant to 31 U.S.C. 9303(c) and 31 CFR part 225.

The same restrictions and requirements applicable to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR part 113, shall apply with respect to sureties on bonds filed with the Commission by complainants as a prerequisite to a temporary relief under section 337 of the Tariff Act of 1930. If the surety is an individual, the individual must file an affidavit of the type shown in appendix A to §210.68. Unless otherwise ordered by the Commission, while the bond of the individual surety is in effect, an updated affidavit must be filed every four months (computed from the date on which the bond was approved by the Secretary or the Commission).

(b) The bond and accompanying documentation must be submitted to the Commission within the time specified in the Commission notice, order, determination, or opinion requiring the posting of a bond, or within such other

time as the Commission may order. If the bond is not submitted within the specified period (and an extension of time has not been granted), temporary relief will not be issued.

(c) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forfeiture of the bond pursuant to §210.70:

(1) The investigation caption and docket number;

(2) The names, addresses, and seals (if appropriate) of the principal, the surety, the obligee, as well as the "attorney in fact" and the registered process agent (if applicable) (see Customs Service regulations in 19 CFR part 113 and Treasury Department regulations in 31 CFR parts 223, 224, and 225);

(3) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond); and

(4) A section at the bottom of the bond or other instrument for the date and authorized signature of the Secretary to reflect Commission approval of the bond.

(d) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government

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obligation tendered in lieu of a surety bond, in accordance with 31 U.S.C. § 9303, 31 CFR parts 202, 206, and 225 and other governing Treasury regulations and circular(s). If required by the governing Treasury regulations and circular, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other government obligation tendered in lieu of a surety bond may have to be collateralized. See, e.g., 31 CFR 202.6 and the appropriate Treasury Circular.

- c. Real estate equity (subtract Line b from Line a)
d. Fair value of all solely owned property other than real estate
e. Total of the amounts on Lines c and d
f. All other liabilities owing or incurred not included in Line b
g. Net worth (subtract Line f from Line e)

\*Do not include property exempt from execution and sale for any reason. Surety's interest in community property may be included if not so exempt.

APPENDIX A TO § 210.68—AFFIDAVIT BY INDIVIDUAL SURETY

United States International Trade Commission Affidavit by Individual Surety 19 CFR 210.68

State of

County

SS:

I, the undersigned, being duly sworn, depose and say that I am a citizen of the United States, and of full age and legally competent; that I am not a partner in any business of the principal on the bond or bonds on which I appear as surety; and that the information herein below furnished is true and complete to the best of my knowledge. This affidavit is made to induce the United States International Trade Commission to accept me as surety on the bond(s) filed or to be filed with the United States International Trade Commission pursuant to 19 CFR 210.68. I agree to notify the Commission of any transfer or change in any of the assets herein enumerated.

1. Name (First, Middle, Last)

2. Home Address

3. Type & Duration of Occupation

4. Name of Employer (If Self-Employed)

5. Business Address

6. Telephone No.

Home

Business

7. The following is a true representation of my assets, liabilities, and net worth and does not include any financial interest I have in the assets of the principal on the bond(s) on which I appear as surety.

- a. Fair value of solely owned real estate \*.
b. All mortgages or other encumbrances on the real estate included in Line a

8. LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER, THE VALUE OF WHICH IS IN LINE a, ITEM 7 ABOVE¹

Amount of assessed value of above real estate for taxation purposes:

9. DESCRIPTION OF PROPERTY INCLUDED IN LINE d, ITEM 7 ABOVE (List the value of each category of property separately)²

10. ALL OTHER BONDS ON WHICH I AM SURETY (State character and amount of each bond; if none, so state)³

11. SIGNATURE

12. BOND AND COMMISSION INVESTIGATION TO WHICH THIS AFFIDAVIT RELATES

SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

DATE OATH ADMINISTERED MONTH DAY YEAR CITY STATE (Or Other Jurisdiction)

NAME & TITLE OF OFFICIAL ADMINISTERING OATH SIGNATURE

MY COMMISSION EXPIRES

INSTRUCTIONS

- 1. Here describe the property by giving the number of the lot and square or block, and addition or subdivision, if in a city, and, if in the country, after showing state, county, and township, locate the property by metes and bounds, or by part of section, township, and range, so that it may be identified.
2. Here describe the property by name so that it can be identified—for example "Fifteen shares of the stock of the "National Metropolitan Bank, New York City," or "Am. T. & T. s. f.5's 60."
3. Here state what other bonds the affiant has already signed as surety, giving the

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name and address of the principal, the date, and the amount and character of the bond.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994]

### **§210.69 Approval of complainant's temporary relief bond.**

(a) In accordance with 31 U.S.C. §9304(b), all bonds posted by complainants must be approved by the Commission before the temporary relief sought by the complainant will be issued. See also 31 U.S.C. §9303(a) and 31 CFR 225.1 and 225.20. The Commission's bond approval officer for purposes of those provisions shall be the Secretary.

(b) The bond approval process may entail investigation by the Secretary or the Commission's Office of Investigations to determine the veracity of all factual information set forth in the bond and the accompanying documentation (e.g., powers of attorney), as well as any additional verification required by 31 CFR parts 223, 224, or 225. The Secretary may reject a bond on one or more of the following grounds:

(1) Failure to comply with the instructions in the Commission determination, order, or notice directing the complainant to post a bond;

(2) Failure of the surety or the bond to provide information or supporting documentation required by the Commission, the Secretary, §210.68 of this part, 31 CFR parts 223 or 224, or other governing statutes, regulations, or Treasury circulars, or because of a limitation prescribed in a governing statute, regulation, or circular;

(3) Failure of an individual surety to execute and file with the bond, an affidavit of the type shown in appendix A to §210.68, which sets forth information about the surety's assets, liabilities, net worth, real estate and other property of which the initial surety is the sole owner, other bonds on which the individual surety is a surety (and which must be updated at 4-month intervals while the bond is in effect, measured from the date on which the bond is approved by the Secretary on behalf of the Commission or by the Commission);

(4) Any question about the solvency or financial responsibility of the surety, or any question of fraud, misrepresentation, or perjury which comes to

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light as a result of the verification inquiry during the bond approval process; and

(5) Any other reason deemed appropriate by the Secretary.

(c) If the complainant believes that the Secretary's rejection of the bond was erroneous as a matter of law, the complainant may appeal the Secretary's rejection of the bond by filing a petition with the Commission in the form of a letter to the Chairman, within 10 days after service of the rejection letter.

(d) After the bond is approved and temporary relief is issued, if any question concerning the continued solvency of the individual or the legality or enforceability of the bond or undertaking develops, the Commission may take the following action(s), sua sponte or on motion:

(1) Revoke the Commission approval of the bond and require complainant to post a new bond; or

(2) Revoke or vacate the temporary remedial order for public interest reasons or changed conditions of law or fact (criteria that are the basis for modification or rescission of final Commission action pursuant to §210.76(a)(1) and (b)); or

(3) Notify the Treasury Department if the problem involves a corporate surety licensed to do business with the United States under 31 U.S.C. §§9303-9306 and 31 CFR parts 223 and 224; or

(4) Refer the matter to the U.S. Department of Justice if there is a suggestion of fraud, perjury, or related conduct.

### **§210.70 Forfeiture or return of complainant's temporary relief bond.**

(a)(1) If the Commission determines that one or more of the respondents whose merchandise was covered by the temporary relief order has not violated section 337 of the Tariff Act of 1930 to the extent alleged in the motion for temporary relief and provided for in the temporary relief order, proceedings to determine whether the complainant's bond should be forfeited to one or more respondents in whole or part may be initiated upon the filing of a motion by a respondent within 30 days after filing of the aforesaid Commission determination on violation.