

§ 223.14

(d) Contract bonds given in excess of the amount of the contract; in which cases the amount of the contract will be regarded as the liability.

(e) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, whereby any law or decree of a court, the amount to be deposited shall be less than the penalty of the bond; in which cases the maximum amount on deposit at any one time will be regarded as the liability.

[Dept. Circ. 297, July 5, 1922]

§ 223.14 Schedules of single risks.

During the months of January, April, July, and October of each year every company will be required to report to the Secretary of the Treasury every obligation which it has assumed during the 3 months immediately preceding, the penal sum of which is greater than 10 percent of its paid up capital and surplus, together with a full statement of the facts which tend to bring it within the provisions of this part, on a form suitable for the purpose.

[Dept. Circ. 297, July 5, 1922]

§ 223.15 Paid up capital and surplus for Treasury rating purposes; how determined.

The amount of paid up capital and surplus of any such company shall be determined on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as the Secretary of the Treasury may deem necessary or proper.

[42 FR 8637, Feb. 11, 1977]

§ 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 licensed to transact surety business and other details. If the Secretary of the Treasury shall take any exceptions to the annual financial statement submitted by a

31 CFR Ch. II (7–1–13 Edition)

company, he shall, before issuing Department Circular 570, give a company due notice of such exceptions. Copies of the Circular are available from the Assistant Commissioner, Comptroller upon request. Selection of a particular qualified company from among all companies holding certificates of authority is discretionary with the principal required to furnish bond.

[34 FR 20189, Dec. 24, 1969, as amended at 40 FR 6499, Feb. 12, 1975; 42 FR 8637, Feb. 11, 1977; 49 FR 47002, Nov. 30, 1984]

§ 223.17 Revocation.

Whenever it appears that a company is not complying with the requirements of 6 U.S.C. 6–13 and of the regulations in this part, the Secretary of the Treasury will:

(a) In all cases notify the company of the facts or conduct which indicate such failure, and provide opportunity to the company to respond, and

(b) In those cases where the public interest in the constant financial stability of such a company allows, also provide opportunity to the company to demonstrate or achieve compliance with those requirements. The Secretary shall revoke a company's certificate of authority with advice to it if:

(1) The company does not respond satisfactorily to his notification of noncompliance, or

(2) The company, provided an opportunity to demonstrate or achieve compliance, fails to do so.

[34 FR 20189, Dec. 24, 1969. Redesignated at 38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8637, Feb. 11, 1977]

§ 223.18 Performance of agency obligations.

(a) Every company shall promptly honor its bonds naming the United States or one of its agencies or instrumentalities as obligee. If an agency's demand upon a company on behalf of the agency or laborers, materialmen, or suppliers (on payment bonds), for payment of a claim against it is not settled to the agency's satisfaction, and the agency's review of the situation thereafter establishes that the default is clear and the company's refusal to pay is not based on adequate

grounds, the agency may make a report to the Secretary of the Treasury, including a copy of the subject bond, the basis for the claim against the company, a chronological resume of efforts to obtain payment, a statement of all reasons offered for non-payment, and a statement of the agency's views on the matter.

(b) On receipt of such report from the Federal agency the Secretary will, if the circumstances warrant, notify the company concerned that the agency report may demonstrate that the company is not keeping and performing its contracts and that, in the absence of satisfactory explanation, the company's default may preclude the renewal of the company's certificate of authority, or warrant prompt revocation of the existing certificate. This notice will provide opportunity to the company to demonstrate its qualification for a continuance of the certificate of authority.

[34 FR 20189, Dec. 24, 1969. Redesignated at 38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8638, Feb. 11, 1977]

§ 223.19 Informal hearing on agency complaints.

(a) *Request for informal hearing.* If a company determines that the opportunity to make known its views, as provided for under § 223.18(b), is inadequate, it may, within 20 business days of the date of the notice required by § 223.18(b), request, in writing, that the Secretary of the Treasury convene an informal hearing.

(b) *Purpose.* As soon as possible after a written request for an informal hearing is received, the Secretary of the Treasury shall convene an informal hearing, at such time and place as he deems appropriate, for the purpose of determining whether revocation of the company's certificate of authority is justified.

(c) *Notice.* 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 substantiate its refusal to settle the claims made against it by the Federal agency making the report under § 223.18(a).

(d) *Conduct of hearings.* The hearing shall be conducted by a hearing officer appointed by the Secretary. The company may be represented by counsel and shall have a fair opportunity to present any relevant material and to examine the agency's evidence. Formal rules of evidence will not apply at the informal hearing.

(e) *Report.* Within 30 days after the informal hearing, the hearing officer shall make a written report to the Secretary setting forth his findings, the basis for his findings, and his recommendations. A copy of the report shall be sent to the company.

[38 FR 22779, Aug. 24, 1973]

§ 223.20 Final decisions.

If, after review of the case file, it is the judgment of the Secretary that the complaint was unfounded, the Secretary shall dismiss the complaint by the Federal agency concerned and shall so notify the company. If, however, it is the judgment of the Secretary that the company has not fulfilled its obligations to the complainant agency, he shall notify the company of the facts or conduct which indicate such failure and allow the company 20 business days from the date of such notification to demonstrate or achieve compliance. If no showing of compliance is made within the period allowed, the Secretary shall either preclude renewal of a company's certificate of authority or revoke it without further notice.

[38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8638, Feb. 11, 1977]

§ 223.21 Reinstatement.

If, after one year from the date of the expiration or the revocation of the certificate of authority, under § 223.20 a company can show that the basis for the non-renewal or revocation has been eliminated and that it can comply with the requirements of 6 U.S.C. 6-13 and the regulations in this part, a new certificate of authority shall be issued without prejudice.

[38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8638, Feb. 11, 1977]