

§ 25.95

§ 25.95 New bond.

The appropriate ATF officer may at any time, at his or her discretion, require a new bond. A new bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity shall execute a new bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a new bond. When a bond is found to be not acceptable by the appropriate ATF officer, the principal will be required immediately to obtain a new and satisfactory bond or discontinue business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.96 Superseding bond.

When the principal submits a new bond to supersede a bond or bonds in effect, the appropriate ATF officer, after approving the superseding bond, will issue a notice of termination for the superseded bond under the provisions of this subpart. Superseding bonds will show the current date of execution and their effective date.

§ 25.97 Continuation certificate.

If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force for a succeeding period of not less than 4 years from the expiration date of the bond or continuation certificate, the brewer may submit, in lieu of a new bond, a Brewer's Bond Continuation Certificate on Form 5130.23, executed under the penalties of perjury, by the brewer and the surety attesting to continuation of the bond. Each continuation certificate will constitute a bond and all provisions of law and regulations applicable to bonds on Form 5130.22 given under this part, including the disapproval of bonds, are applicable to continuation certificates.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

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§ 25.98 Surety or security.

(a) *Bond coverage.* Bonds required by this part will be given with corporate surety or collateral security.

(b) *Corporate surety.* Surety bonds may be given only with surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds, subject to the limitations set forth in the current revision of Treasury Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Reinsuring Companies.

(c) *Revisions of Circular No. 570.* Treasury Department Circular No. 570 is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(d) *More than one corporate surety.* A bond may be executed by two or more corporate sureties. Each corporate surety may limit its liability in terms on the face of the bond in a specified amount. This amount may not exceed the limitations set forth for corporate security by the Secretary which are set forth in the current revision of Treasury Department Circular No. 570. The sum of the liabilities for the sureties will equal the required penal sum of the bond.

(e) *Deposit of collateral securities in lieu of corporate surety.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of corporate surety in accordance with 31 CFR Part 225.

(96 Stat. 1068, 1085 (31 U.S.C. 9304-9308); sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.99 Filing powers of attorney.

Each bond, continuation certificate, and each consent of surety will be accompanied by a power of attorney authorizing the agent or officer to execute the document. The power of attorney will be prepared on a form provided by the surety company and executed

under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it will be accompanied by a certificate of its validity.

(96 Stat. 1068, 1085 (31 U.S.C. 9304-9308))

DISAPPROVAL OR TERMINATION OF BONDS
OR CONSENTS OF SURETY

§ 25.101 Disapproval of bonds or consents of surety.

(a) *Reasons for disapproval.* The appropriate ATF officer may disapprove a bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond or consent of surety, or if any of the above entities owning, controlling or actively participating in the management of a business giving a bond as a brewer, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of law of the United States if it related to internal revenue or customs taxation of distilled spirits, wines or beer, or if the offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise; or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wines, beer, or other intoxicating liquor.

(b) *Appeal of disapproval.* If the bond or consent of surety is disapproved, the person giving the bond or consent of surety may appeal the disapproval to the appropriate ATF officer, who will grant a hearing in the matter if requested by the applicant or brewer, and whose decision will be final.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

§ 25.102 Termination of surety's liability.

The liability of a surety on a bond required by this part will be terminated only as to liability arising on or after:

(a) the effective date of a superseding

bond; (b) the date of approval of the discontinuance of business of the brewer; or (c) following the giving of notice by the surety as provided in § 25.103.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.103 Notice by surety for relief from liability under bond.

A surety may, at any time, in writing, notify the principal and the appropriate ATF officer that the surety desires after a specified date (not less than 60 days after the date of service on the principal) to be relieved of any liability under the bond which is incurred by the principal after the date named in the notice. The surety shall include proof of service of the notice on the principal with the notice filed with the appropriate ATF officer. The notice will become effective on the date named, unless the surety withdraws the notice, in writing. The surety on the bond remains liable under the bond with respect to any liability incurred by the principal while the bond is in effect.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.104 Termination of bonds.

Brewer's bonds may be terminated as to liability for future removals or receipts (a) pursuant to application of the surety as provided in § 25.103, (b) on approval of a superseding bond, or (c) on notification by the principal that the business has been discontinued. On termination of the surety's liability under a bond, the appropriate ATF officer will notify the principal and sureties.

(31 U.S.C. 9301, 9303)

§ 25.105 Release of collateral security.

Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part will be released in accordance with 31 CFR Part 225. When the appropriate ATF officer determines there is no outstanding liability against the bond and that it is no longer necessary to hold the security, he or she shall fix the date or dates on which a part or all of the security will be released. At any time prior