Proposed Rules

Federal Register

Vol. 61, No. 222

Friday, November 15, 1996

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 225

RIN 1510–AA36

Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds With Sureties

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise its regulations which govern the acceptance of bonds secured by Government obligations in lieu of bonds with sureties. It specifically addresses the mechanics of pledging book-entry Government obligations, and clarifies existing requirements for accepting bonds secured with Government obligations. These revisions are intended to provide greater clarity and flexibility by replacing obsolete references and unnecessary requirements with current references and requirements. In addition, this rule proposes to expand the use to which the proceeds of the pledged Government obligations, in the event of a default in performance, may be applied.

DATES: Comments on this proposed rule must be received on or before December 16, 1996.

ADDRESSES: Comments or inquiries on this proposed rule may be addressed to Policy and Planning Division, Financial Management Service, Room 403A, 401 14th St. S.W., Washington DC 20227, ATTN: Michael Dressler.

FOR FURTHER INFORMATION CONTACT: Michael Dressler, Financial Program Specialist, (202) 874–7106, or Cynthia L. Johnson, Director, (202) 874–6657, Cash Management Policy & Planning Division, 401 14th Street, SW., Washington, DC 20227.

SUPPLEMENTARY INFORMATION:

Background

Persons required by Federal law to give an agency a surety bond for the purpose of guaranteeing performance may give in lieu thereof a bond secured by Government obligations. To assist agencies in reviewing and accepting such bonds, the Secretary of the Treasury (the Secretary) promulgated regulations codified at 31 CFR part 225, which set forth requirements applicable to bonds secured by Government obligations. These regulations currently contemplate bonds secured by Government obligations in definitive or printed form.

However, since these regulations were last significantly revised in 1969, the form of newly issued Government obligations pledged under this Part has changed from definitive to book-entry. Because of this change, many questions have arisen under this Part regarding book-entry Government obligations. The purpose of this Notice of Proposed Rulemaking is to update, clarify, and simplify the requirements governing the acceptance of bonds secured by Government obligations in both definitive and book-entry form.

In addition, this proposed rule provides that in the event of a default, the proceeds from the sale of the pledged Government obligations, will be available to satisfy any claim of the United States. The reference to any claim of the United States is an expansion of the current rule which limits the application of the proceeds to damages arising out of the default.

Summary of Changes

Book-Entry Government Obligations

The current regulation does not distinguish between definitive and book-entry Government obligations. Because the mechanics of pledging book-entry obligations are different than those for definitive obligations, the proposed rule contains two sections to address the pledging of book-entry (§ 225.4) and definitive (§ 225.5) obligations. These discrete sections are proposed in response to numerous questions raised by Federal agencies regarding the pledge of book-entry versus definitive obligations.

Currently, the Bureau of Public Debt is in the process of revising the regulations governing book-entry Treasury bonds, notes and bills held in the commercial book-entry system. 61 FR 8420 (March 4, 1996). The revised regulations, known as the Treasury/Reserve Automated Debt Entry System (TRADES), will incorporate recent changes in commercial and property law addressing the holdings of securities through financial intermediaries. It is contemplated that TRADES will apply to outstanding securities currently governed by 31 CFR part 306, Subpart O. Conforming changes to part 306 will be made with the publication of TRADES in final form.

Forms

The current rule requires that the bond, which is referred to as an agreement and power of attorney, be in a prescribed format. Because a survey revealed that each agency has varying needs and requirements, the proposed rule (§ 225.3) deletes this prescriptive requirement so as to afford agencies greater flexibility in tailoring bonds to fit their needs. However, the proposed rule (§ 225.3) still requires an agency to ensure that the bonds irrevocably authorize it to: (1) Sell the Government obligations in the event of a default in performance; and (2) apply the proceeds therefrom to satisfy any claim of the United States Government. The reference to any claim of the United States (§ 225.3) is an expansion of the current rule (§ 225.5) which limits the application of the proceeds to damages arising out of the default.

Payment of Interest

The current rule provides that, in the absence of default, the obligor shall be entitled to receive interest accruing upon Government obligations deposited in accordance with the rule (§ 225.11), except that coupons on bearer Government obligations will be retained by the bond official in the absence of written application by the obligor. The proposed rule (§ 225.6) provides that interest for all forms of Government obligations will generally be paid to the obligor in the normal course without written application. The proposed rule (§ 225.6) also adds a provision permitting the bond official to require retention of accrued interest. This change clarifies the degree of agency flexibility in securing the performance of their obligors. The Secretary believes these changes will facilitate uniform operational handling of interest payments, expedite the payment of interest to obligors, and further secure performance by obligors.

Custodian Duties and Responsibilities

The proposed rule (§ 225.7) clarifies that agency custodians will act in strict accordance with authenticated agency instructions. This clarification stems from questions posed by the Federal Reserve regarding whether its duties and responsibilities under 31 U.S.C. 9303(b)(1) require it to act in strict accordance with the authenticated agency instructions.

Role of Federal Reserve Banks

In accordance with 31 CFR part 306, the Federal Reserve Banks will act as fiscal agents of the United States for the purposes of these regulations.

Rulemaking Analysis

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small business entities. Accordingly, a Regulatory Flexibility Act analysis is not required. These regulations authorize persons, including small entities, to pledge bonds secured by Government obligations in lieu of bonds with sureties. Consequently, these regulations provide additional options to business entities pledging collateral, as well as a flexible regulatory scheme with no adverse economic impact on small entities.

Notice and Comment

Public comment is solicited on all aspects of this proposed regulation. The Financial Management Service will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

List of Subjects in 31 CFR Part 225

Fiscal Service, Government securities, Surety bonds.

For the reasons set forth in the preamble, 31 CFR part 225 is proposed to be revised to read as follows:

PART 225—ACCEPTANCE OF BONDS SECURED BY GOVERNMENT OBLIGATIONS IN LIEU OF BONDS WITH SURETIES

Sec.

Authority: 31 U.S.C. 321; 31 U.S.C. 9301; 31 U.S.C. 9303; 12 U.S.C. 391.

§ 225.1 Scope.

The regulation in this part applies to Government agencies that accept bonds secured by Government obligations in lieu of bonds with sureties. The Financial Management Service (FMS) is the Secretary of the Treasury's (Secretary) representative in all matters concerning this part unless otherwise specified. The Commissioner of the FMS may issue procedural instructions implementing this regulation.

§ 225.2 Definitions.

For the purpose of this part:

Agency means a department, agency, or instrumentality of the United States Government.

Authenticate instructions means to verify that the instructions received are from a bond official.

Bearer means an obligation whose ownership is not recorded. Title to such an obligation passes by delivery without endorsement and without notice. A bearer obligation is payable on its face to the holder at either maturity or call for redemption.

Bond means an executed written instrument, which guarantees the fulfillment of an obligation to the United States and sets forth the terms, conditions, and stipulations of the obligation. If the obligation is not fulfilled, the bond assures payment, to the extent stipulated, of any loss sustained by the United States.

Bond official means an agency official having authority under Federal law or regulation to approve a bond with surety or sureties and to approve a bond secured by Government obligations.

Book-entry means a computerized entry made on records of a Federal Reserve Bank. (See part 306 of this title, Subpart O, Book-Entry Procedure).

Custodian means a Federal Reserve Bank acting as fiscal agent of the United States or a depositary specifically designated by the Secretary for the purpose of this part.

Definitive means in engraved or printed form.

Federal Reserve Bank means a Federal Reserve Bank and its branches.

Government obligation means a public debt obligation of the United States Government, and an obligation whose principal and interest are unconditionally guaranteed by the Government.

Obligor includes, but is not limited to, an individual, a trust, an estate, a partnership, a corporation, and a sole proprietor.

Officer authorized to certify assignment means the individual identified in the regulation codified at § 306.45 of this title.

Par value means the stated value of a Government obligation that will be paid at maturity.

Payment bond means a bond which assures payment, as required by law, to all persons supplying labor or material in the performance of required work provided for in a contract.

Pledge means a pledge of, or transfer of a security interest in, a Government obligation to a bond official's agency as collateral in lieu of a bond with a surety or sureties.

Procedural Instructions means the Treasury Financial Manual published by the Financial Management Service.

Registered means that ownership of the Government obligation is listed in the issuer's records, and that the obligation is payable at maturity or call to the person in whose name the obligation is inscribed or to that person's assignee.

§ 225.3 Pledge of Government obligations in lieu of a bond with surety or sureties.

(a) *General.* An obligor required by Federal law or regulation to furnish a bond with surety or sureties may give in lieu thereof a bond secured by Government obligations to a bond official.

(b) *Bond.* The bond, at a minimum, shall irrevocably authorize the bond official to collect, sell, assign, or transfer such Government obligations and any interest retained therefrom in the event of the obligor's default in performing any of the terms, conditions, or stipulations of such bond, and shall authorize the bond official to apply the proceeds therefrom, in whole or in part, to satisfy any claim of the United States Government against the obligor.

(c) *Amount of Government obligations.* The obligor shall pledge to the bond official Government obligations whose par value is at least equal to the face amount of the required bond with surety or sureties.

(d) *Avoiding frequent substitutions.* To avoid the frequent substitution of Government obligations, the bond official may reject Government obligations which mature, or are redeemable, within one year from the date they are pledged to the bond official.

§ 225.4 Pledge of book-entry Government obligations.

(a) *General.* An obligor, or an obligor's financial institution, acting as agent for the obligor, shall arrange a pledge pursuant to the prior agreement and approval of the bond official, of book-entry Government obligations by authorizing a Federal Reserve Bank to make an appropriate entry in its records. The Federal Reserve Bank is not required to establish that the agreement and approval of the bond official has been obtained prior to the making of such entry.

(b) *Receipt.* Upon the making of the entry in the records of a Federal Reserve Bank, such Bank will promptly issue a receipt or an activity statement, or both, to the bond official and to the obligor.

(c) *Effect of entry.* The making of such an entry in the records of a Federal Reserve Bank shall have the effect as provided in § 306.118(a) of this title, or other applicable regulations.

§ 225.5 Pledge of definitive Government obligations.

(a) *Type and assignment.* Definitive Government obligations may be in bearer or registered form, and shall be owned by the obligor.

(1) *Bearer Government obligations.* The obligor shall pledge bearer Government obligations to the bond official with all unmatured interest coupons attached.

(2) *Registered Government obligations; assignment.* The obligor shall pledge Government obligations registered in the obligor's name to the bond official by assignment in accordance with subpart F of part 306 of this title (31 CFR 306.40 et seq.) and other codified procedures for issuers that apply to assignment of the registered Government obligations, except that, when so authorized under such procedures, all assignments shall be made in blank.

(b) *Delivery to bond official; receipt.* All deliveries of definitive Government obligations from the obligor to the bond official under this part shall be made at the risk and expense of the obligor. Upon receipt of definitive Government obligations, the bond official will issue the obligor a receipt.

(c) *Risk of loss; safekeeping.* All definitive Government obligations held by the bond official will be held at the risk of the bond official. The bond official will keep safe all definitive Government obligations.

(d) *Deposit.* The bond official is strongly encouraged to ensure that definitive Government obligations are deposited with either of the following custodians:

(1) A Federal Reserve Bank, having the requisite facilities; or,

(2) A depositary specifically designated for that purpose by the Secretary.

(e) *Delivery to custodian; receipt.* If the bond official is in receipt of definitive Government obligations, and thereafter deposits those obligations with a custodian, the expense and risk of loss in delivery will rest with the bond official. Upon the deposit of definitive Government obligations, the custodian will issue the bond official a receipt. All definitive Government obligations held by the custodian will be held at the risk of the custodian.

(f) *Conversion to book-entry.* When converting definitive Government obligations to book-entry form, a Federal Reserve Bank will act pursuant to and in accordance with codified book-entry procedures for issuers that apply to the definitive Government obligations pledged to the bond official's agency, including the book-entry procedures for Treasury securities set forth in subpart O of part 306 of this title (31 CFR 306.115 *et seq.*).

§ 225.6 Payment of interest.

(a) *General.* Except as otherwise provided in this section, and § 225.7(b), interest accruing upon Government obligations pledged to a bond official's agency in accordance with this part will be remitted to the obligor.

(b) *Bond requirements.* The bond official will require that the bond provide that the bond official may retain any interest accruing upon any Government obligations, or direct that such interest be retained by the custodian.

(c) *Default.* If the bond official determines that the obligor has defaulted in the performance of any of the terms, conditions, or stipulations of the bond, the bond official will retain any interest accruing upon Government obligations pledged to the bond official's agency or direct the custodian, in accordance with § 225.7(b) and other relevant provisions of this part, to retain such interest.

§ 225.7 Custodian duties and responsibilities.

(a) *General.* A custodian shall authenticate instructions received from a bond official and shall act in accordance with such authenticated instructions. The custodian assumes no liability and is without liability of any kind for acting in accordance with such authenticated instructions, except for the custodian's failure to exercise ordinary care. By providing a bond secured by Government obligations in lieu of a bond with surety or sureties, an obligor agrees not to hold either the custodian or the Secretary liable or responsible for the actions or inactions of a bond official or for carrying out a bond official's authenticated instructions.

(b) *Interest.* Absent authenticated instructions from the bond official to retain interest, interest received by the custodian on Government obligations pledged to the bond official's agency in accordance with this part will be remitted in the regular course of business to the obligor.

(c) *Release and substitution of Government obligations.* A custodian will only release or substitute Government obligations or the proceeds from Government obligations, including any retained interest, in accordance with a bond official's authenticated instructions.

(d) *Liquidation of Government obligations.* A custodian will collect, sell, assign, or transfer Government obligations, including any interest therefrom, only in accordance with a bond official's authenticated instructions.

(e) *Application of proceeds.* A custodian will apply the proceeds from the collection, sale, assignment, or transfer of Government obligations only in accordance with a bond official's authenticated instructions.

§ 225.8 Bond official duties and responsibilities.

(a) *Duties and responsibilities.* The bond official's duties and responsibilities are as follows:

(1) Approving the bond secured by Government obligations after determining its sufficiency;

(2) Verifying ownership of any definitive Government obligations given, and ensuring that any registered Government obligations are properly assigned;

(3) Approving the delivery of book-entry Government obligations after determining their sufficiency;

(4) Providing the custodian, when appropriate, with clear and concise instructions;

(5) Taking all reasonable and appropriate steps to ensure that all procedures or transactions conform with the provisions of this part; and,

(6) Notifying the Secretary of the Treasury, or designee, upon an obligor's default in performing any of the terms, conditions, or stipulations of a bond and

applying any part of the proceeds therefrom that is in excess of the amount required to assure payment of any loss sustained by the United States related to the purpose of the bond to satisfy any claim of the United States Government against the obligor.

(b) [Reserved]

§ 225.9 Return of Government obligations to obligor.

(a) *General.* Except as provided in subsection (b) of this section, the bond official will return the Government obligations, and any interest retained therefrom, to the obligor, without written application from the obligor, when the bond official determines that the Government obligations are no longer required under the terms of the bond.

(b) *Miller Act Payment Bonds.* The bond official will not return Government obligations to an obligor who has furnished to the bond official a payment bond, if:

(1) A person, who supplied the obligor with labor or materials and whom the obligor has not paid, files with the agency head the application and affidavit provided for in the Miller Act (Act), as amended (40 U.S.C. 270a–270d), and the time provided in the Act for the person to commence suit against the obligor on the payment bond has not expired; or

(2) A person commences a suit against the obligor within the time provided for in the Act, in which case the bond official will hold the Government obligations subject to the order of the court having jurisdiction of the suit; or

(3) The bond official has actual knowledge of a claim against the obligor on the basis of the payment bond, in which case the bond official may return the Government obligations to the obligor when the bond official deems appropriate.

(c) *Claim of the United States unaffected.* Nothing in this section shall affect or impair the priority of any claim of the United States against Government obligations, or any right or remedy granted by the Miller Act or by this part to the United States in the event of an obligor's default on any term, condition, or stipulation of a bond.

(d) *Return of definitive Government obligations; risk of loss.* Definitive Government obligations to be returned to the obligor will be forwarded at the obligor's risk and expense, either by the bond official, or by a custodian upon receipt of a bond official's authenticated instruction.

§ 225.10 Other agency practices and authorities.

(a) *Agency practices.* Nothing in this part shall be construed as modifying the existing practices or duties of agencies in handling bonds, except to the extent made necessary under the terms of this part by reason of the acceptance of bonds secured by Government obligations.

(b) *Agency authorities.* Nothing contained in this part shall affect the authority of agencies to receive Government obligations for security in cases authorized by other provisions of law.

§ 225.11 Courts.

(a) *General.* Nothing contained in this part shall affect the authority of a court over a Government obligation given as security in a civil action.

(b) [Reserved]

Dated: November 7, 1996.

Russell D. Morris,

Commissioner.

[FR Doc. 96–29216 Filed 11–14–96; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Parts 404 and 407

Seaway Regulations and Rules: Great Lakes Pilotage Rates

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Extension of comment period.

SUMMARY: This document extends the comment period of the notice of proposed rulemaking and hearing (NPRM) published in the Federal Register on September 25, 1996, (61 FR 50258) which proposed to increase Great Lakes Pilotage Rates. The comment period for this NPRM was scheduled to end on November 12, 1996. This document extends that comment period by 15 days, to November 27, 1996. The extension is necessary to allow commenters additional time to analyze the rulemaking and prepare their comments.

DATES: Any party wishing to present views on the NPRM published on September 25, 1996, (61 FR 50258) may file comments with the Saint Lawrence Seaway Development Corporation (SLSDC) on or before November 27, 1996.

ADDRESSES: Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Suite 5424, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Chief Economist, Saint Lawrence Seaway Development Corporation, Office of Great Lakes Pilotage, United States Department of Transportation, 400 7th Street SW., Suite 5424, Washington, DC 20590, room 5421, 1–800–785 2779, or Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Suite 5424, Washington, D.C. 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: On September 25, 1996, the SLSDC published a notice of proposed rulemaking and hearing (NPRM) in the Federal Register (61 FR 50258), which proposed to increase Great Lakes pilotage rates. The comment period for the NPRM was scheduled to end on November 12, 1996.

A public hearing announced in the NPRM was held on October 22, 1996, at the Crowne Plaza at Detroit Metro Airport, 8000 Merriman Road, Romulus, MI. During the hearing several commenters requested additional time to analyze the NPRM and file comments. Subsequent to the hearing, the SLSDC received written comments asking for an extension of the comment period. A number of commenters requested the extension because they believe an increase in Great Lakes pilotage rates may have a potentially large effect on commerce in the Great Lakes region and that they needed more time to complete a thorough analysis of the NPRM and its possible effects.

Because additional time is needed for commenters to complete their analysis and prepare their comments, the comment period for the NPRM published on September 25, 1996, (61 FR 50258) is extended 15 days, and will now end on November 27, 1996.

Issued at Washington, D.C. on November 12, 1996.

Saint Lawrence Seaway Development Corporation.

Gail C. McDonald,

Administrator.

[FR Doc. 96–29386 Filed 11–14–96; 8:45 am]

BILLING CODE 4910–61–P