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U.S. Immigration
and Customs
Enforcement

APR 08 2008

MEMORANDUM FOR Assistant Directors
Deputy Assistant Directors
Field Office Directors
Deputy Field Office Directors

FROM: Gary Mead
Acting Director

SUBJECT: Immigration Bond Policies and Procedures

Purpose

This memorandum establishes the Immigration bond policies and procedures for all field offices.

Authorities/References

Immigration and Nationality Act
Title 8 Code of Federal Regulations
Immigration Bond, form 1-352
Department of Treasury Circular 570
Field Financial Procedures (Burlington Finance Center)

Superseded/cancelled policy/Summary of Changes

This memorandum supersedes all previous INS and DFIS bond policies and procedures with the exception of those memoranda referenced herein.

Background

DRO bond management administration has undergone substantial progress since 2006. As a result, the need for updated DRO bond policies and procedures is vital to continue to achieve bond management excellence. This memorandum provides important updated bond policies, procedures and information.

Discussion

I. Immigration Bond Defined

An immigration bond is a financial agreement between the obligor and the alien in which the Department of Homeland Security is the beneficiary.

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2. Introduction to Bonds

The primary regulation that authorizes immigration bonds is Title 8 CFR §103.6 which provides authority for the Field Office Director (FOD) to release an alien under the conditions of an Immigration bond.

A bond is a legally binding guaranty by an individual or company (the obligor) in which the obligor commits a certain sum of money to guarantee an alien's compliance with the bond conditions. The form used to execute immigration bond agreement of all types is the Immigration Bond, form I-352.

If the specified conditions are fully met, the bond is cancelled and any securities or monies deposited are returned, with interest, to the obligor. If no securities have been exchanged, as is the case with cash and surety bonds, then the surety company is released from its obligation to the Government (8 CFR §103.6(c)). If the conditions are not fulfilled, the bond is declared breached and the financial deposit forfeited or the liquidated damages recovered by the government (8 CFR §103.6(e)).

The bonds posted with Detention and Removal Operations (DRO) and discussed in this chapter are, specifically, "immigration bonds." Although delivery bonds comprise the largest group in both numbers and dollars, immigration bonds serve other purposes, also, e.g., setting conditions on an alien's release, enforcing an alien's timely departure, ensuring an alien maintains a valid immigration status and does not violate the conditions under which he/she entered the United States, etc. Through knowledge and applicability of immigration bond programs and eligibility for release in compliance with 8 CFR §1236.1, FODs must ensure that appropriate actions are taken to protect the interests of the United States and the Department of Homeland Security, Immigration and Customs Enforcement.

3. Bond Types

General - Immigration bonds fall into the two categories. Appearance Bonds, which include Delivery and Order of Supervision Bonds, and Performance Bonds, which include Voluntary Departure, Public Charge, Maintenance of Status and Delivery, and Inadmissibility Bonds.

- a) Appearance Bonds - This type of bond secures the release of an alien in custody to the obligor in return for the obligor's undertaking to produce or cause the alien to be produced to an immigration officer or an immigration judge of the United States as specified in the appearance notice upon each and every written request until the proceedings are finally terminated. An alien may be required to appear for immigration proceedings, interviews, for any reason deemed necessary by the Field Office Director (FOD). or to be removed from the United States pursuant to an Order of Removal by a court. A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States, which may not be released or discharged by a field office. This category includes the following:

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- Delivery Bond — This is posted for aliens in administrative immigration proceedings. The bond is breached when the obligor fails to "deliver" the alien as agreed, and has failed to comply with the Notice to Deliver Alien, Form 1-340 (details in §12.10 below). Cancellation of the bond is when the obligor is in compliance with the bond agreement, which includes, delivering the alien, alien's death, proceedings are terminated, the bond is cancelled, or the U.S. Immigration and Customs Enforcement (ICE) accepts the alien into custody for detention or removal, etc. (8 CFR §212.5(d)(1)) (details in §12.11). Pursuant to the INA §236(a) (2) (A) the minimum bond is \$1,500.00.
 - Order of Supervision Bond (OSUP) — If an alien is determined eligible for release after a final order of removal has been issued and has met the regulatory requirements, pursuant to 8 CFR 241.5(a) "*Order of Supervision, (b) Posting of bond*. An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal."
 - The obligor guarantees the alien's compliance with all requirements (cooperating with efforts to obtain travel documents, surrendering for removal, etc.). Given the number of conditions that may be attached to bonds of this type, you must exercise judgment in deciding whether the violation of a particular condition constitutes a substantial violation resulting in a breach event (see below). Ensure the alien and obligor understand that a violation of the Order of Supervision conditions, or fails to appear pursuant to a demand Notice to Obligor to Deliver Alien, Form 1-340, can result in a breach of the bond. As a general rule, if you find "substantial performance" (compliance with the terms of the Order of Supervision), you should let the bond stand.
 - NOTE: There is no conversion of a delivery bond into an OSUP bond. A deliver bond must be cancelled and an OSUP Bond must be posted in lieu of the delivery bond or the delivery bond may be left in place and an OSUP bond may be posted. Ensure the 1-352 form in section "C" contain the following: "Bond conditioned upon completion with an alien's Order of Supervision, form I-220B (attached)."
 - An explanation as to the responsibilities associated with posting OSUP bond must be explained to the obligor and a copy of the signed OSUP attached to the obligor and ICE's copies of the bond form. Update the appropriate DRO databases.
- b) Performance Bond - Bonds of this type oblige the alien to meet the standard conditions imposed by his/her immigration status (e.g., a B-2 visa holder cannot work in the United States) or case-specific requirements. Performance bonds are:
- Voluntary Departure (VD) Bonds - These bonds commit the alien to arrange, finance, and affect his/her departure from the United States by a specified date, in accordance with the conditions specified in the voluntary departure order. Voluntary departure expires on or before the date issued by the court or by the Agency and cannot exceed 120days(8CFR240.25(c)).

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- Public Charge Bond — This bond is posted to ensure an alien's ability to support him/her without depending on public assistance from any federal, state, or local agency. With enforceable affidavits of support required for family-based immigration since December 1997, the need for public charge bonds has declined. For clarification of the public benefits excluded from public charge determinations, see INS No 1988-1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds dating from May 1999 (<http://www.acf.dhhs.gov/programs/ofa/fieldgui.htm>) (8 CFR 213.1). This bond is generally under the purview of Citizenship and Immigration Services (CIS), and Customs and Border Protection (CBP) Pursuant to 8 CFR § 213.1, the minimum bond is \$1,000.
- Maintenance of Status and Departure Bonds — This can be required by a consulate before issuing a nonimmigrant visa, by Inspections prior to admission, by an immigration judge (IJ) prior to admission, or by an adjudicator before granting an extension of stay or change of status; rarely used. This bond is generally under the purview of Customs and Border Protection (CBP) (8 CFR 103.6(c) (2)).
- Inadmissibility Bond — This type of bond is posted to parole certain inadmissible arriving aliens; previously called "exclusion bonds." These bonds are primarily accepted by Customs and Border Protection (CBP) (8 CFR §212.5(d) (1)).

4. Bond Posting Instructions

- a) Bond-Posting - Any person (including the arrested alien, illegal aliens in proceedings, corporation, or surety company) may post an immigration bond. Individuals and corporations post cash bonds. Surety insurance companies (and their agents) post surety bonds. (Ref: Bond Posting Hours and Release Policies and Procedures, December 18, 2006)
- b) Bond Posting Hours -All DRO offices that accept the posting of cash or surety bonds are to service the public between the hours of 9:00 a.m. to 3:00 p.m. local time.
- c) Alien Verification- The field office accepting the bond and field office releasing the alien, must identify the alien via name, alien registration, FBI number, date of birth, country of citizenship, etc. It is imperative that the alien identification is verified in order to avoid an inadvertent release of any alien from DRO custody.
- d) Verify the bond amount - Bond amounts must be based on articulable facts and have a nexus between the alien's compliance with the factors addressed in 8 CFR §236.1(c); 8 CFR §241.3; 8 CFR §241.5, or as set by the Immigration court or Federal Court.
- e) Arrange for alien's release - Prior to posting a bond, the FOD or his/her designee must confirm that arrangements have been made to ensure the alien's

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timely and safe release. If the alien cannot be released upon the posting of the bond due to technical reasons, then the alien's release should occur as soon as possible thereafter. The release of the alien should be coordinated with all parties involved, the detention facility, the field office(s), the obligor and the alien.

- f) Verify alien's release - Immediately upon posting of the bond, the field office accepting the bond must ensure the alien is timely released from custody.

5. Cash Bond Posting Procedures

- a) Cash Bonds Defined - The individual or corporation must post the full amount of the bond in cash or cash equivalent, in the form of cash (U.S. dollars only); cashier's check; certified check; or money order. Checks and money orders must be made payable to the "*Department of Homeland Security*" or "*Immigration and Customs Enforcement*". For security reasons, variations or abbreviations i.e. DHS or ICE are not acceptable. Field Office Directors have the discretion to determine which form of payments is acceptable. In order to accept cash, the FOD must ensure adequate physical security standards are maintained. (Ref: INS Fee Collection Procedures)
- b) Request identification from the obligor - The obligor may present any U.S. government- issued photo identification including, but not limited to, passport, military ID, resident-alien card, driver's license. Be sensitive to the fact that the obligor may be a U.S. citizen. ICE will accept any government issued photo identification presented by the obligor. (*Most states now require legal status in the United States to obtain a Drivers License.*) If the authenticity of the photo-ID presented by the obligor is questionable, consult your supervisor. (See Director's memorandum entitled *Confiscation and Return of Original Documents*, dated July 14,2006)

Note: Officers, Special Agents and Immigration Enforcement Agents have the legal authority to question or determine alienage under the INA. The Office of Principal Legal Advisor (OPLA) has established that pursuant to current regulations and authority, Bond Control Specialists, Deportation Assistants and Clerks can sign receipts (Form 1-305); however, other official documentation must be signed by authorized Officers, Special Agents and Immigration Enforcement Agents.

All identification presented by the obligor must be photocopied and attached to the bond documents and placed in the A-file.

- c) Status of obligor - Aliens posting bonds must either be lawful permanent residents (LPR), alien placed in removal/exclusion proceedings, or be a final order alien on an Order of Supervision. When an alien with no legal status in the United States appears to post a bond, he/she should be placed in removal proceedings. Once served with their Notice to Appear, Form 1-862, he/she may post the bond. An alien, subject to a

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Final Order of Removal who appears to post a bond must be taken into custody and have custody status determined by the Field Office Director. If released, the alien must be issued an Order of Supervision with /or without an Order of Supervision Bond.

- d) Social Security and Tax Identification Numbers (SSN and TIN) - A bond cannot be denied or refused if an obligor does not produce a social security or tax identification number. Note: The Office of Principal Legal Advisor (OPLA) has determined that the requirement to present valid social security numbers or tax identification numbers pursuant to 31 USC §770 l(d) applies to cash bonds and surety bonds. If the obligor or surety does not provide a TIN/SSN, they are subject to backup withholding of the interest payments. Government payments to a foreign address are an automatic 30% withholding on the interest payment.
- e) Eligibility for release - The Field Office Director (FOD) is ultimately responsible for the release of an alien in the custody of Immigration and Customs Enforcement (ICE). Therefore, it is every employee's responsibility to ensure that the release of an alien on bond is in compliance with the Immigration and Nationality Act and regulations and that all documentary evidence requirements have been met. Review the alien's identity and file to verify custody status and eligibility for release on bond. Ensure that the Field Office Director or his/her designee has authorized the release of the alien. When an alien is in the custody or detained by a law enforcement agency other than ICE, no immigration bond may be posted.
- f) Quality control - When you have completed the above verifications, you may ask a Detention and Removal Assistant (DRA) to prepare the bond forms. Although quality control is everyone's responsibility, ultimately it is the Deportation Officer, Immigration Enforcement Agent or the Bond Control Specialist's responsibility to ensure completeness and accuracy of the bond forms before the bond is posted. It is recommended that the Deportation Officer, Immigration Enforcement Agent or Bond Specialist initial the documents before the bond be posted.
- g) Bond log - Obtain the bond number from the cash bond logbook and enter it in the space provided for "Bond Receipt No." at the top right-hand corner of the immigration bond contract, Form 1-352.

Enter into the cash bond logbook immediately after the bond receipt number: the alien's name and address; the obligor's name and address; the sum deposited, and the current date.

- h) Prepare the 1-352 - Have the obligor sign where indicated (boxes "D" and "I"). With an ICE employee witnessing the transaction, complete section "J".

By completing box "E," the Field Office Director approves the transaction.

Prepare receipt for U.S. Bonds or Notes, or Cash, Accepted as Security on Immigration Bonds, form 1-305, recording the cash or securities deposited with the Department

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(DHS) to guarantee the bond. It is recommended that all cash transactions be witnessed by a DHS employee (Ref: INS Fee Collection Procedures).

Give a copy of Form 1-352, the original 1-305 to the obligor, and any bond riders (additional conditions) agreed to by the obligor (Ref: 8 CFR §103.6(a) (2)). If the alien is detained locally, place the original 1-352 and a copy of the 1-305 in the alien's administrative file. Forward copies of both documents to the Burlington Financial Center, (BFC) with the deposit ticket, Form SF-512 and the schedule of collections, Form G-254.

- i) Document transmittal - If the alien is detained elsewhere, send the originals to the File Control Office (FCO) via overnight delivery. Send the BFC a Notice-Bond Location Transfer, form 1-350, for notification of a change of the File Control Office (FCO).

Upon bond posting completion, ensure that a Deportation Officer or Immigration Enforcement Agent is notified. Ensure the appropriate FCO or detention facility receives the appropriate documents in order to release the alien.

- j) Verification of alien's release - Upon execution of the immigration bond, the field office accepting the bond must ensure that the alien is released in a location that is safe and where public transportation is available. The alien should be release without delay, but not released during late night hours and/or in a location that is unsafe.
- k) Database updates - Update the Deportable Alien Control System (DACs), EARM, and EADM. On the BOND screen, enter the amount deposited (BOND-AMT-POSTED); the type of bond ("C" for cash or "S" for surety), the bond number (BOND-NUM), and the post date (DATE-BOND-POST), along with the obligor's name and address (OBLIGOR). On the BIOS screen, enter the alien's new address. Note other details on the Case Comments (CCOM) screen. Update the CRIM screen with all criminal charges and convictions. Within DACs, the CCOM should clearly reflect the type of bond posted, additional requirements placed upon the alien, if any.
- l) Stamp - "BOND POSTED" on the front of the A- file jacket, along with the posting date.

See *Bonds Field Financial Procedures*, section 1 (<http://ofm.ins/static/pdf/bonds.pdf>); see also *DACS User Manual*, sections 4.3.4 and 4.3.5 (Appendix 36-1. below).

6. Surety Bond Procedures

- a) Surety Bonds - The surety company or agent on their behalf must provide a power of attorney (the legal instrument authorizing the agent to execute the immigration bond on the surety company's behalf, and to obligate money equal to at least the amount of the bond.) If the power of attorney specifies a monetary limit, e.g. \$5,000, the agent can post bond up to the specified amount only. The agent may not combine two or more

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powers of attorney to post a bond. No cash, check, or other collateral is required at the time the bond is posted.

The power of attorney must specifically authorize the posting of an immigration bond; otherwise the surety company may dispute the agent's authority to act on its behalf.

Treasury Department Circular 570 lists all surety companies approved to post bonds with the U.S. Government. Copies are available in all ICE offices and on the Internet, at <http://www.fms.treas.gov/c570/c570.html/certified>.

Surety companies assume financial responsibility and risk as obligors, to ensure delivery of the bonded alien. A Surety Company (or the company), agency or the bonding agents working on the company's behalf, shall deliver an alien as required. An alien taken into custody by an agency or agents working for or on behalf of a surety company shall ensure the safety, health and welfare of the alien, and assumes such responsibility until that alien is properly turned over to DRO.

The surety company or agent on their behalf may prepare the form 1-352; although this may expedite the bond posting it is not recommended for security and liability purposes. However, if it is allowed, a Deportation Officer, Immigration Enforcement Agent, or a Bond Control Specialist must review and initial these forms for completeness and accuracy before accepting the bond on behalf of the Department of Homeland Security.

To do so, follow the same procedures indicated above for Cash Bonds, except as indicated below:

- b) Power of Attorney - Verify the validity of the power of attorney provided by the surety agent by checking the maximum amount and the expiration date before attaching it to the bond contract. Remember that the power of attorney must specifically authorize the agent to post an immigration bond. The name on the Power of Attorney must correspond to the agent's name on the 1-352.
 - c) Surety Bond Logbook - Obtain the bond number from the surety bond logbook, and enter it in the space provided for "Bond Receipt No." at the top right-hand corner of the 1-352. Check that "-S-" (for surety) appears between the location code and logbook number, e.g., ELP-S-3456. (ELP is the three code (FCO) for El Paso.) Cash bond numbers have no middle component, so are shorter. (Note, however, both "-C-" and "-S-" appear in BFC's bond-numbering system, e.g., ELP-S-3456; ELP-C-5498).
- Enter into the surety bond logbook, immediately after the bond receipt number: the alien's name, number, and address; the obligor's name and address; the bond amount; and the current date.
- d) Bond form Completion - Have the surety agent complete boxes "D" and "F" on the I-352. After providing the date where indicated, he/she must sign box "D" twice: as

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obligor (exercising power of attorney) as well as agent. Likewise, completing box "F" will require the agent to answer for the surety company and for him/herself, providing both tax ID numbers, as required.

Provide the agent with two copies of the 1-352: one to retain, the other to file with the surety company underwriting the bond. If the alien is detained locally, place the original 1-352 and power of attorney in the alien's administrative file. Forward copies to the BFC.

- e) Release of Alien - Upon bond posting completion, ensure that a Deportation Officer or Immigration Enforcement Agent is notified that the bond process has been completed and the release notification will be forwarded to the appropriate detention facility or personnel to release the alien.
- f) Update PRO Databases - As indicated above.

See *Bonds Field Financial Procedures*, (<http://ofm.ins/static/pdf/bonds.pdf>): see also *DACS User Manual*, sections 4.3.4 and 4.3.5 (Appendix 36-1, below).

- g) Release of Obligation - The obligor must comply with the terms and conditions contained within the version of the Immigration Bond, form 1-352 on record (Ref: Declarations of Breach memorandum 04/06/05.).
- h) Breach of Immigration Bond - If the obligor fails to comply with the terms and conditions contained within the version of the Immigration Bond, form 1-352 on record the bond shall be immediately breached as of the date of the breach event. (Ref: Declarations of Breach memorandum 04/06/05.).

7. Bond Processes

- a) Bond Determination Defined - Title 8 CFR § 1003.19 explains the custody and bond determinations made by ICE may be reviewed by an Immigration Judge pursuant to 8 CFR §1236.
- b) Notice of Custody Determination. Form 1-286. is used to advise the alien of the custody determination, bond amount for release, and the right to a custody/bond re-determination. Each alien who is placed in a removal or an inadmissibility proceeding is to be issued this form. This form is used to begin any pre-final order bond processing. Provide a copy of this form to the alien and the original is to be filed in the A- file.
- c) Bond Amount. Bond amounts must be articulable and have a nexus between the alien's compliance with the factors addressed in 8 CFR §1236.1(c); §1241.3; §1241.5, or as set by the Immigration Court, or Federal court.

8. Bond Re-determination

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General - At any time during removal proceedings, the alien may request a bond re-determination from the Field Office Director. If dissatisfied with the Field Office Director's, the alien may request a custody re-determination before an immigration judge and if dissatisfied with the immigration judge's decision, the alien may file an appeal with the Board of Immigration Appeals (BIA). Upon exhausting all administrative avenues an alien may appeal his custody/bond determination with the use of a Writ of Habeas Corpus to the federal court or federal appeals court with jurisdiction over the case. (8 CFR §1003.19; §1236.1)

- a) ICE Appeal - Through the Chief Counsel or the United States Attorney, ICE may also appeal the immigration judge's bond decision to the BIA or through the federal courts.
- b) Release Pending Bond Re-determination - Although re-determination hearings take place quite promptly, some aliens/obligors prefer not to wait. In such cases, at the Field Office Director's discretion, the alien may be released pending bond re-determination if the full amount of the bond being requested to be reduced, is posted. (It is recommended that release of the alien not occur if a re-determination hearing is imminent)

Processing a Bond after Re-determination.

- a) Alien is not in custody - a Notice to Obligor to Deliver Alien, Form 1-340, must be sent to have the alien appear for custody re-determination.
- b) Surety bond - must be cancelled if the amount is different. The surety company must post a new bond in the revised amount with a new power of attorney.
- c) Cash bond - amounts can be increased or decreased without necessarily canceling the bond and re-issuing, see *Bonds Field Financial Procedures*, sections 8 and 9 (<http://ofm.ins/static/pdf/bonds.pdf>).
- d) PRO Database Updates - Record any re-determination of the bond amount in the DACS BOND screen. Enter the date (BOND-RED-DATE) and the new amount set by the FOD, Officer in Charge, IJ, or BIA. Update, BIOS in EARM/EADM with any updated information and CCOM with who re-determined bond amount.

9. Bond Miscellaneous

- a) Voluntary Departure (VD) Bonds - If the immigration judge (IJ) granting voluntary departure requires the posting of a voluntary departure bond, the alien must post the bond within five business days after the IJ's order. This requirement is absolute, whether or not the alien plans to appeal.
- b) Appeal filed, fails to post ordered VD bond - If the alien does not post bond within five days of the order by the IJ, but files an appeal, the Voluntary Departure Order is

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vacated, and becomes a final order of removal. However, the order is not final until such time as the Board of Immigration Appeals (BIA) renders its decision. The alien will therefore be appealing a removal order, not a grant of voluntary departure. Immediately notify the Office of the Chief Counsel of the alien's noncompliance, to ensure counsel can so inform the BIA of the alien's failure to comply with the IJ's order. Until a decision is rendered on the appeal, the alien's order of removal is not final.

- c) No Appeal Filed - If the alien fails to post the bond within five days of the IJ's order and has not filed an appeal, the Voluntary Departure order is vacated—the Alternate Order is effective date of the IJ order.
- d) PRO Database Updates - Update CASS screen's CASE-CAT field to reflect a case status (5B, 8E, 81) and CCOM with the "failure to post bond in timely matter and is a failure to comply with the IJ's order". Route A-file to the Fugitive Operations Team (if applicable), or the non-detained docket.
- e) Revocation of Bond - The Secretary of DHS may at any time may revoke a bond or parole under subsection (a), arrest the alien under the original warrant, and detain. (8 USC §1253; INA §243(b); 8 CFR §241.1(1))
- 0) Placing a Detainer on a Bonded Alien. A bonded alien taken into custody by another law enforcement for a violation of federal, state or local law, shall be considered to have violated his conditions for release pursuant to 8 CFR §241.1(1) (1) & (2) and a Immigration Detainer - Notice of Action, Form 1-247 shall be placed served on the law enforcement agency and the detention facility in which the alien is being detained. This notice informs that agency to contact ICE. ICE shall take the alien into custody. The Field Office Director will conduct a custody re-determination. Pursuant to Declarations of Breach of Delivery Bonds, dated April 6,2005, a bond will be cancelled upon notification to ICE that a bonded alien will be kept in custody for more than 30 days.
- g) Multiple Bonds - If more than one type of bond i.e. Voluntary Departure Bond and Delivery Bond, OSUP Bond, etc. is required to be posted, then it is important to ensure that DACS CCOM reflects the same information that would be normally inputted into DACS BOND screen as it is incapable to reflect more than one active bond.
- h) Courtesy Bond - Is when a bond is posted at a field office, sub-office or facility on behalf of another jurisdiction. The jurisdiction where the alien is detained should also be the File Control Office (FCO) and the DACS Control Office (FCO). That office should make any custody/bond determinations.
- i) Stamps - "Placed Bond Posted", "Breached", "Cancelled" stamps on the outside of the A- file folder that flags the case as one with an active bond, as well as a reminder to monitor the bond at each stage of the removal process and to prevent the file from being prematurely retired to the Federal Record Center or National Records Center. If stamps are unavailable, write this information on the A-file jacket.

- j) Call-Up Dates - Maintain control of a bond docket by calling-up and reviewing the cases on a regular basis. Call-up dates are the key to successful docket management, signaling when to next review the case to check on its status (extended case call-up dates of six months or more are not recommended.) and take any docket action required.
 - Give your delivery and voluntary departure bonds call-up dates that allow you to review each case for appropriate action within a few days of an order, a hearing, an appeal, a stay, a demand, or a grant of relief. The most appropriate call-up will depend upon a combination of factors: the case category, individual circumstances, etc.
 - Assign call-up dates for voluntary departure files based on the date the voluntary departure status expires. The burden of proof for compliance is upon the obligor. The alien must have departed on or before the date to which voluntary departure is granted. The obligor must provide ICE proof of alien's departure within the specified time.
- k) PRO Database Updates - The FCO is responsible to ensure BOND, BIOS, CCOM, etc. screens are updated with all relevant alien and bond information. (Notice: Field Office Directors have discretion on accepting *courtesy bonds* and FCOs failure to update DACS reflects negatively on the office location where the bond is posted.)
- l) CCOM - Use the Case Comments screen (CCOM) in DACS to record information not captured on the Bond Summary (BOND) screen. The BOND screen limits entries to preset data fields; it has no "other" section for notes. CCOM is where specific case information and status can be obtained, and the importance of ensuring conveyance of any additional information to others cannot be stressed enough.
- m) Transferring the File Control Office (FCO) and DACS Control Office (FCO) - When a bonded alien is granted a change of venue, or the A-file is transferred ensure that the File Control Office (FCO) is transferred. Complete the Bond Location Notice, Form I-350, and forward a copy to the BFC. (Note: Failure to transfer FCO in DACS will result in the FCO reflected in DACS fully responsible for the DACS case and its updates.)
- n) Changing Obligors (Processing Bond-Ownership Transfers) - To transfer ownership of a bond, a new Immigration Bond, form I-352, must be completed by the new obligor. Upon the posting of the new bond, the existing bond will be cancelled. (The Designation of Attorney in Fact, Form I-312 cannot be used to change obligors.)
- o) Designation of Attorney in Fact Form I-312 - This form was designed for deposits of cash or U.S. bonds pledged for the release of aliens in accordance with the terms of the Form I-352. As the label on the form indicates, the form is to be used to appoint the Obligor's attorney in fact "To accept return of United States Bonds or notes deposited to secure Immigration bond," if the obligor has questions about the I-312, contact the Bond Branch at the BFC. When the obligor submits the form, check for completeness

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and accuracy, place a copy in the file. Forward the original to the BFC. (NOTE: The 1-312 cannot be used to change obligors.)

10. Demands on Bonds

- a) General - Pursuant to the immigration bond's terms and conditions of a Delivery Bond, the agency is to use the Notice to Obligor to Deliver Alien, Form 1-340, to have the obligor present the alien when requested.
- b) Purpose and Usage - A Demand Notice may be served upon the obligor to have the alien presented for whatever purpose the agency deems necessary. The "Purpose" portion of the demand notice may or may not be completed as it is not part of the Terms and Conditions of the Immigration Bond, form 1-352.
- c) Recipient(s) of Notice - An 1-340 is to be sent to those obligors (Surety, Agency, or both) indicated on the Immigration Bond, form 1-352. (With only the Amwest Settlement exceptions see below, the notice may also be sent to the alien and the attorney of record.)
- d) Notice to Surety through Agent - Send notices, demands, etc., to the agent at the address of record in the bond contract, with copies to the surety company. Ensure ICE complies with the obligor's mailing instructions per block A of the 1-352. If the bond does not provide the surety's address, you have the option of forwarding the surety's copies to the company's headquarters.
- e) Service of Notice - Service on the obligor of the 1-340 may now be sent using United States Postal Service (USPS) Delivery Confirmation, PS Form 152, in lieu of the PS Form 3811 Domestic Return Receipt Requested ("Greenie"). (Note: This does not preclude the discretionary use of the "Greenie" or Delivery Confirmation on all other bond documents as a form of service.) This bar coded and numbered portion of the PS Form 3811 shall be properly affixed to the envelope being sent to the obligor, and the completed receipt portion of the PS Form 3811 stapled to the file copy of the demand notice. The postal tracking number shall be written on the notice and entered into DACS CCOM. This information must include the date of mailing and initials of the person sending the notice, for example, "[Date], Delivery Confirmation #0305 27JO 0002 1673 8045 [print initials]." (Ref: Service of Notices Relating to Immigration Delivery Bonds (11/05/2007))
 - Verification of delivery status (Delivery Confirmation or Return Receipt Requested) shall be completed within **30 days** of service at WWW.USPS.COM *Track and Confirm* website. Simply go to the Track and Confirm website and type in the postal tracking number. The print-outs shall be placed on the right hand-side of the A-file.
 - Prior to service of a Form 1-323 Notice - Immigration Bond Breached on the obligor ensured that a printout of the delivery confirmation from the USPS

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website for the Form I - 340 Notice to Deliver Alien has been placed on the right-hand side of the A-file. Upon the filing of a Notice of Appeal or Motion, form I-290B, delivery confirmations relating to the immigration bond must be included in all Records of Proceedings submitted to the Administrative Appeals Office (AAO).

Note: Addendum to Declarations of Breach of Delivery Bonds memorandum (04/06/2005/) are as follows:

- The 2005 Memorandum recognizes that certain limited sureties are entitled to have the settlement agreement dated September 10, 1997 ("Amwest Settlement II") taken into consideration when issuing a Declaration of Breach, i.e. Form I-323, Notice - Immigration Bond Breached. In addition to the companies listed in the 2005 Memorandum, American Surety is also entitled to such consideration.
- Paragraph 2: Paragraph 2 of the 2005 Memorandum should be replaced with the following language:
- Paragraph 2: A Notice - Immigration Bond Breached, Form 1-323, will not be issued when the demand for delivery, Form 1-340, is not served on the obligor or co-obligor (if any) in the appropriate manner provided by policy memorandum entitled Service of Notices Relating to Immigration Delivery Bonds or unless otherwise prescribed.
- Paragraph 3: Paragraph 3 of the 2005 Memorandum should be replaced with the following language:
- Paragraph 3 A Notice - Immigration Bond Breached, Form 1-323, will not be issued when the demand for delivery is not mailed to the address of the obligor or co-obligor (if any) specified on the bond, Form 1-352, or, if applicable, to the new address of the obligor or co-obligor (if any), as provided in writing.
- Other than the foregoing clarifications, the 2005 memorandum remains effective.

Service and the Amwest Settlement Agreement - Settlement rules only apply to the companies addressed in the Declarations of Breach of Delivery Bonds memorandum (04/06/2005/) Amwest Surety Insurance Company ("Amwest"). Far West Surety Insurance Company ("Far West"). AAA Insurance Company and Gonzales and Gonzales Bonds and Insurance Agency ("G & G"). but only when G & G acts as agent for Amwest. American or Far West.

- Send demand notice to obligor three days before anyone else.
- Complete Amwest questionnaire and attach photo copy of picture of alien.
(Do not apply these rules to other sureties)

- f) Surety Company Change of Address - A separate obligor's change-of-address notification is required for each outstanding bond. The notification will include the obligor new address, the bonded alien's information.

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- g) Surrender Location - An alien may appear at any DRO office and must be accepted by and processed by that office (see Bond Backlog Reduction Project, (October 17, 2006)). It is therefore recommended that the notice state the specific place of appearance, but also indicate "or the nearest Detention and Removal Office".
- h) Date of Delivery - The date of delivery should be ten (10) or more business days from the date of the notice and may be for a span of time i.e. "Alien to be delivery within five days of May 6, 2008."

11. Delivery of an Alien

- a) Delivery of Bonded Alien - An alien taken into custody by an agency or agents working for or on behalf of a surety company shall comply with any Notice to Obligor to Deliver Alien, Form 1-340 (demand notice).
- b) Delivery Pursuant to a Demand - No DRO office may refuse the acceptance of an alien upon an obligor's delivery of that alien pursuant to a Notice to Obligor to Deliver Alien, form 1-340. However, it is within the discretion of FOD to determine taking that alien into custody unless otherwise noted within this memorandum.
- c) Early Delivery of an Alien - An obligor may surrender an alien before a specified date; however the obligor must submit a request or make prior arrangements to the Field Office Director (FOD). The request must contain a brief explanation as to the reason they wish to deliver the alien, as well as include date, time and place the obligor wishes to deliver the alien. The FOD will consider an early surrender of the alien. The FOD's decision is discretionary.
- d) Delivery of Final Order Alien - An obligor may deliver an alien subject to a final order without notice. The field office must take custody of the alien and cancel the existing bond, unless the alien is to be released on an Order of Supervision and the current obligor wishes to remain the obligor. (See *Accepting Delivery of Final Order Aliens*, dated May 1, 2003; *Declarations of Breach of Delivery Bonds* memorandum, dated April 6, 2005). Exception: If the alien has been complying with an Order of Supervision and the obligor cannot articulate an OSUP violation or flight risk the field office is not required to accept the alien and the bond may be continued.
- e) Receipt to Obligor for Alien's Delivery - Upon each delivery of the alien, the field office will notate such action on the form 1-340 and return that form to the obligor. The notation and the case comments in the DRO database will be the following "*Alien timely delivered to [DCO] pursuant to demand on [date]. Alien was [taken into custody and the cancelled] [not taken into custody and the bond left in place]. [Print and sign officers name.]*".
- f) Extensions beyond delivery date - Before the surrender date, the obligor may request a date of delivery beyond the date of appearance on the Form 1-340. The Field Office Director has the discretionary authority to approve or disapprove the obligor's request.

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A memo to file, updates to DRO databases and a corrected 1-340 must reflect the newly scheduled date, time and place. If changes are annotated on the Form 1-340, they must be dated and initial by the ICE official unless a new 1-340 is provided. Provide a copy of the corrected or revised copy to the alien, obligor, and the A- file.

- g) Delivery of an Alien to Other Location - If exigent circumstances arise the alien may be delivered to a DRO office other than the one indicated on the Notice to Obligor to Deliver Alien, Form 1-340. The alien may be surrendered/delivered to the nearest DRO office where that alien was apprehended, e.g. alien resides or is apprehended in New York and form 1-340 indicates alien is to appear in Detroit Field Office. Delivery of the alien to the New York Field Office would be the appropriate course of action.
- h) Date and Time of Delivery of Bonded Alien - Except if otherwise arranged or otherwise indicated on the 1-340, the alien shall be delivered to the appropriate DRO office during normal business hours, normal business days.
- i) Acceptance of a Bonded Alien - Upon delivery of a bonded alien pursuant to a demand notice, the alien may be taken into custody and a written receipt shall be provided to the delivering party and the bond shall be cancelled. If however, the Field Office Director or his/her designee determines the alien shall not be taken into custody the delivering party shall be immediately notified in writing that the surety bond will be continued. All bonded aliens must be thoroughly processed (Ref: Bond Backlog Reduction Project memorandum 10/18/06.).
- j) Receipt to Obligor for Alien's Delivery - Upon each delivery of the alien, the field office will notate such action on the form 1-340 and return that form to the obligor. The notation and the case comments in the DRO database will be the following "*Alien timely delivered to [DCO] pursuant to demand on [date]. Alien was [taken into custody and the (cancelled) (breached) (mitigated)] [not taken into custody and the bond left in place]. [Print and sign officers name.]*"
- k) Verification of the Alien's Wellbeing - Before acceptance of the bonded alien, the alien shall be quickly interviewed, away from the delivering parties to ensure that they have been appropriately cared for and neither harmed nor abused. If any form of abuse is noted or reported by the alien, local authorities shall be notified immediately and a report shall be filed. A memorandum to the Field Office Director shall be completed by close of business and added to the aliens file.
- l) Final Order Aliens - An obligor may deliver an alien subject to a final order of removal, which is not on a current Order of Supervision, without notice to the nearest DRO office. In accordance with policy memorandum entitled *Accepting Delivery of Final Order Aliens* (May 1, 2003) all final order aliens must be accepted by field offices. Therefore, upon delivery of a final order alien, the bond must be cancelled and a new custody determination rendered unless otherwise arranged with the existing obligor. (Upon issuance of a final order of removal/deportation, and although the alien may have posted a bond prior to issuance of that order, he/she must comply with that

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order or report to the nearest DRO office to have their post order custody determined. If it is determined that the final order alien is eligible for release pursuant to 8 CFR § 1241.4, then pursuant to 8 CFR §241.5(a) he/she *shall* be released pursuant to an order of supervision and may also have the additional compliance tool of an Order of Supervision Bond (OSUP Bond) placed upon him/her.)

12. Substantial Performance; Substantial Violation

To promote compliance and prevent careless but consequential mistakes, take the time to explain "substantial performance/compliance" and "substantial violation" to both obligor and alien before releasing the alien into the obligor's custody. Spell out the responsibilities of the bonded alien and obligor; if necessary, go over the technical language in the bond contract.

Compliance with the conditions specified on the bond, allowing for minor or technical exceptions, will satisfy the requirement for "substantial performance." The burden of proof of substantial performance rests with the obligor. A finding of substantial performance releases the obligor from liability (8 CFR 103.6(c)(3)).

13. Procedures for Breaching Bonds

- a) Breach Event— The breach event occurs on the date the obligor fails to comply with the conditions of the bond (aka substantial performance violation), i.e. failure to appear, failure to maintain status, failure to depart, failure to comply with Order of Supervision, etc.
- b) Breach Date - The breach date is the date reflected on the Notice of Immigration Bond Breach, form 1-323. Until the execution and service of the 1-323 the bond remains in full force and effect.
- c) Delivery Bond Breach Event - The Delivery Bond breach event occurs when the obligor fails to timely deliver an alien pursuant to a Notice to Obligor to Deliver Alien, form 1-340. The breach event date is the date or last date the obligor had to deliver the alien reflected on the demand notice.
- d) Order of Supervision (OSUP) Bond Breach Event - This type of bond is breached when the alien fails to comply with the conditions of the OSUP, form I-220B and/or fails to appear in accordance with a demand notice or pursuant to the conditions of the OSUP. The breach event date is the date the alien violated the OSUP or failed to appear pursuant to demand or the OSUP.
- e) Voluntary Departure (YD) Bond Breach Event - This type of bond is breached when the alien fails to depart on or before the date specified. (The burden of proof to provide verification of departure/compliance of the voluntary departure order is upon the obligor.) If ICE does not receive verification of departure within 30 days of the required date of departure, the bond will be breached. The Breach event occurred the date the alien was required to depart the United States.

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- f) Notice—Immigration Bond Breached. Form 1-323 - This notice is to inform the obligor of his/her failure to comply with the conditions set when the bond was posted and has resulted in the bond being breached. The notice of rights to appeal that decision is also included. This must be specific in detailing what violation occurred that resulted in the breach action (Original to A-file). Upon service of the form 1-323, no further bond actions are required unless an appeal is filed (see below *Bond Breach Appeals*).
- g) Recipients of Notice of Breach - The form 1-323 and I-290B is to be served upon the obligors) indicated in Pt. A of the 1-352.
- h) Service of Notice of Breach -The form 1-323, shall be served on the obligor via regular mail with the Notice of Appeal to the Administrative Appeals Office, Form I-290B.
- i) PRO Database Updates - Immediately upon completion of breach notification, all DRO databases must be appropriately updated.
- j) Breach Finalization - Unless an appeal is filed, the BFC will administratively finalize the breach 60 days from the date the breach notice is served. (See Final Breached Bond Procedure, (October 17, 2006))
- k) Bond Absconder - Upon execution of the breach bond documents, the alien is now considered a Bond Absconder (See below).
- l) Overtaken decisions - Unless the Administrative Appeals Office (AAO), FOD or Federal Courts overturn the breach, the decision stands. If the breach decision is overturned the decision must be reflected in CCOM and the BFC must be notified. If the FOD does not agree with the AAO decision, the FOD may follow the Motion to Reopen (MTR) instructions below to reopen the bond.

For additional guidance for breaching cash and surety bonds, see *Bonds Field Financial Procedures*, sections 5 and 6 (<http://ofm.ins/static/pdf/bonds.pdf>).

- 14. Mitigation - See Supplemental Guidance to Accepting Final Order Aliens memorandum (05/12/2003).

15. Bond Appeals

- a) General - Pursuant to 8 CFR §103.3 and DHS Delegation 150.1 (March 1, 2003), the Administrative Appeals Office (AAO) has jurisdiction and adjudicates cases involving immigration bond breaches. Both the agency and the appellant are required to comply with filing instructions provided by the form and the regulations.
- b) Filing an AAQ Appeal - The obligor has 30 days from the date of issuance (33 days if the notice was mailed) during which to submit the I-290B, Notice of Appeal, to the ICE field office that issued the breach. If the last day to file falls on a Saturday, Sunday, or

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legal holiday, the filing period will be extended to the next business day. The obligor must follow the instructions as set forth in 8 CFR 103.3.

- c) Rebuttal Brief in Support of Agency Position - DRO will submit an agency brief rebutting the appellant's argument and supporting the agencies position. The Field Office Director or his/her designee shall sign this brief. This will be the cover sheet to every Record of Proceedings (ROP) that is forwarded to the AAO.
- d) Date and Time Stamp - The appeal Form I-290B will be stamped with the time and date of receipt. If no stamp is available the date and time shall be written on the appeal and name shall be legibly signed, printed, and office location. On the Notice of Breach of Bond, Form 1-323, record that an appeal was filed and the date; forward a copy to the DMC.
- e) Improperly Filed Appeals - These actions will be automatically rejected set forth in 8 CFR 103.3(a) (2) (v). The rejection shall be in the format provided with a complete narrative and the regulatory basis of the rejection. It shall be signed by the Field Office Director or by a designee with his/her signature authority. Any funds submitted with an improperly filed appeal shall not be returned with the rejection notice (8 CFR 103.3(a) (2) (v) (B) (1)). The notice shall be sent out using U.S. Postal Service Delivery Confirmation service. Examples of improperly filed appeals are, untimely (unless a brief is filed in support of the appeal), insufficient funds or invalid means of paying filing fees (e.g., bounced check or other financial instrument returned as non-payable), and a person or entity other than the obligor, the obligor's attorney of record, or the surety agent.
- f) Untimely - A declaration of breach not appealed during the filing period is administratively final. An appeal received after the deadline is ineligible for AAO review but may, if it meets the requirements, be processed as a motion to reopen or reconsider (8 CFR §103.3(a)(2)(iii)).
- g) Processing the Appeal - Upon DRO's receipt of an appeal, the appeal will be reviewed and if appropriate forwarded to the AAO with the ROP within 30 days. The case must be reviewed in its entirety to determine whether arguments presented on appeal overcome the basis of the breach. If the grounds of the appeal seem prima facie valid, the officer in charge may treat the appeal as a motion to reopen or reconsider. If, after reviewing the case, the officer in charge finds the breach justified, you must promptly prepare a Record of Proceeding (ROP) and forward the appeal to the AAO.
- h) Officer-Initiated Reconsideration - You may receive information that, if obtained earlier, would have resulted in some outcome other than the bond's being breached (e.g., alien was incarcerated or had already departed in accordance with a grant of voluntary departure). In those cases, the officer in charge has the discretionary authority to file a Motion to Reopen (MTR). (See below MTR section.)

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- i) Creating the Record of Proceeding - Keep these records in reverse-chronological order, from the earliest (at the bottom of the file) to the latest (placed on top). Exception: upon receipt of a brief filed in support of the I-290B, insert it immediately below the I-290B, irrespective of filing date.

The Record of Proceeding (administrative record) will contain copies of the following documents:

- Form G-28, Notice of Entry of Appearance as Attorney or Representative;
 - Form I-290B, Notice of Appeal or Motion, plus briefs or attachments;
 - Form 1-323, Notice-Immigration Bond Breached;
 - Form 1-166, Notice to Surrender for Deportation;
 - Form 1-340, Notice to Obligor to Deliver Alien;
 - U.S. Postal Service Form PS 3811, Return Receipt (proof of delivery of the I-340) and/or the copy of the Delivery Confirmation, PS Form 152, printout of the delivery confirmation from the USPS.com website;
 - Bond Questionnaire and worksheet (Amwest, G&G and Farwest surety companies);
 - Power of attorney (surety bond) or
 - Form 1-305, Receipt for U.S. bonds or Notes, or Cash, Acceptance as Security on Immigration Bond (cash bond);
 - Form 1-352, Immigration Bond;
 - Appellate decision of BIA;
 - Final order of Immigration judge; and
 - Form 1-862, Notice to Appear, or other charging document.
- j) Motion to Reopen or Reconsider (MTR) - If the obligor files a motion to reopen or reconsider an earlier decision of the AAO, place a copy of the appellate decision, the motion, and any attachment at the top of the record of proceeding.
- k) Withdrawal - The obligor may submit a written withdrawal of an appeal before a decision is rendered. Upon receipt of a withdrawal of an appeal, an acknowledgement

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of receipt of the appeal must be sent to the appellant. Note: There is no canceling a withdrawal once it is submitted.

- l) Dismissal - If the AAO dismisses an appeal, update the DRO databases accordingly. Inform the Burlington Finance Center (BFC) by forwarding a copy of the 1-323, stamped or marked "Appeal Filed, Dismissed on [date] and Final on [date]."
- m) Sustained - If the AAO upholds an appeal, forward a copy of the decision to the BFC, along with a copy of the 1-323, stamped or marked "Appeal Filed, sustained on [date]." Process the bond as required by the ruling; update DRO databases accordingly.
- n) Mitigation - If an obligor who has submitted mitigation request later files an appeal based on the same breach event, the AAO will not consider the appeal. In such a case, forward a copy of the appeal directly to the officer in charge adjudicating the mitigation request and forward the original to the AAO with an attached copy of the mitigation request.
- o) DRO Database Updates - Immediately upon receipt of a properly filed appeal, ensure that CCOM is updated with the comment, "[date], Breached Bond Appeal, form I-290B, received this date and BFC notified of appeal filing, [initials]." CCOM will then be updated to state, "[date] ROP for bond appeal, form I-290B completed and forwarded to AAO this date. [Initials]."

16. Delivery Bond Cancellation

- a) General - An immigration bond is cancelled upon the obligor's compliance with the terms and conditions as set forth in the Immigration Bond, form 1-352.
- b) Unenforceable Bond - A cancellation of a bond will occur upon any of the following, provided they occur prior to the date of a breach event, (see *Declarations of Breach of Delivery Bonds*, memo dated April 6, 2005)
 - Deportation, exclusion or removal of the bonded alien
 - Valid proof of the bonded aliens timely departure (VD Bond)
 - Self-deportation or removal (Delivery Bond)
 - A grant of permanent resident status or U.S. Citizenship
 - Terminated immigration proceedings
 - A final decision on the bonded aliens immigration court proceeding, or any other event that allows the alien to remain permanent in the United States
 - ICE taking the bonded alien into custody
 - ICE's receipt of notice that the alien has been taken into custody by another federal, state or local law enforcement agency and will be detained for more than 30 days
 - Upon posting of an ICE detainer while the alien is in the custody of another agency
 - Death of the bonded alien

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- Any other event that renders the alien no longer removable under original charging document or warrant of removal.
- c) Upon Posting of Voluntary Departure Bond - Some terms and conditions require that a Delivery Bond be cancelled upon posting of a VD Bond. Please review the general terms and conditions of the Immigration Bond, Form I-352.
- d) Voluntary Departure with no bond - If the immigration judge neither requires a bond the Delivery Bond is not cancelled and remains enforceable.
- e) Multiple bonds - If an alien granted voluntary departure by an immigration judge appeals the finding of removability, you must maintain both bonds posted on the alien. This situation occurs because the regulations (8 CFR §1240.26(c) (3)) allow no exception to the five-business-day posting for voluntary departure and because ICE is under no legal or logical requirement to cancel the delivery bond after the posting of a voluntary departure bond. Maintain both bonds until the appeal is decided. If the appeal is dismissed, you must cancel the delivery bond; if the BIA grants the alien a benefit cancel both bonds.
- f) Compliance with Voluntary Departure (Verification of Departure) - Upon receipt of evidence of compliance with voluntary departure within thirty (30) days the bond will be cancelled.
- g) Database Updates - Update DRO databases with cancellation information accordingly.
- h) Schrode Rule - The rule established by *Shrode v Rowoldt*, 213F.2d 810 (8th Cir. 1954) stipulated that ICE would cancel any bond which was not breached prior to the expiration of the six month removal period. This case was predicated on former section 242(c) of the Act, 8 U.S.C §1252(c), which was deleted by section 306 of the IIRAIRA, effected April 1, 1997. This section of law no longer exists.

17. Verification of Departure

- a) Verification of Departure Defined - Documentation and/or clear and convincing evidence submitted to support the claim of departure from the United States.
- b) Verification of Departure Forms - Notice of Action-Voluntary Departure, form I-210, Nonimmigrant Checkout Letter, form G-146, and Notification of Departure of Alien (Bonded), form I-392. Blank versions of these forms may be publicly distributed.
- c) Electronic Verification Information Process (eVIP) - A partnership between the Office of Detention and Removal Operations (DRO) and the Department of State's (DOS) Post Liaison Division's Visa Office. The DOS will electronically transmit alien departure verifications forms.
- d) Filing and Routing - Upon receipt of a verification of departure form and/or evidence immediately interfile in the A-file.

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- e) Database Verification - The utilization of various DRO databases to verify departure of an alien is authorized (i.e. TECS, IBIS, US VISIT, etc.) However, it is the obligor's or alien's responsibility to provide evidence of his/her departure. The printout of the document must be attached to the cancellation or breach decision.
- f) Case Closure and Bond Action - Upon receipt of a verification of departure or evidence thereof, determination of case closure is to be made which may include a bond breach or cancellation.

18. Change of Obligor

Changing of an obligor requires the posting of a new bond with an Immigration Bond, form I-352 signed by the new obligor.

Upon posting and receipt of the new obligor's bond, the previous bond shall be cancelled.

19. Bond Motion to Reopen

- a) Motion to Reopen (MTR) Defined - Upon determination that there are appropriate grounds to correct a decision that was made in error or upon overlooked or newly discovered facts or law, the decision may be corrected by the use of appropriate electronic letters from the attached notices of motions and decisions. (Ref: Reversing Declarations of Breach of Delivery Bond, (06/19/2006))
- b) Reversing Cancellations -
 - Reversing the cancellation of a bond requires the use of the two letters, one letter for notice of intent to reopen/reconsider and a second letter for the final decision.
 - Notices to reconsider/reopen bond cancellations shall be served on the surety and agent/co-obligor by regular mail. Action on the motion to reconsider must be deferred for 33 days to allow for the surety/co-obligor to submit a brief. If the obligor or agent/co-obligor timely submits a brief, the brief shall be given due consideration. If the submission is supported by persuasive evidence, the reconsideration motion should be withdrawn, and the surety and agent co-obligor given written notice of the withdrawal.
 - If the obligor or agent/co-obligor waives the submission of a brief or fails to timely submit a brief within the allotted time including any extensions, or if the brief is not persuasive, the reconsideration decision shall be issued and the surety and agent/co-obligor furnished with written notice of the finality of the reconsideration decision.
 - Reconsideration of the erroneous cancellation of cash bonds must be completed prior to the refunding of the bond money by the Debt Management Center (DMC). If upon learning that the agency cancelled the bond in error and upon contacting the DMC it is discovered that the money was returned to the Obligor then a memorandum to file shall reflect the reasons the bond should have been breached and no further action may be taken on that bond.

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- If the money has not been refunded the same procedure should be followed as with surety company bonds EXCEPT THAT THE MOTION MUST BE FAXED IMMEDIATELY to the Debt Management Center at (802) 288-1226.

20. Reversing Breaches

- The combined motion/decision shall be served on the surety and agent/co-obligor by regular mail.
- Decisions upon motions to reconsider declaration of breach decisions require the selection of the bond either being reinstated or cancelled as the circumstances demand.
- Decisions upon motions to reconsider declaration of breach decisions require the use of the appropriate MTR letter and, if the decision requires that the bond be cancelled, an 1-391 must be issued in addition to the decision form. Otherwise, if the decision requires reinstatement of the bond, only the MTR letter should be used.

20. Aged Bonds

- a) Aged Bond Defined - Are defined as a Delivery Bond with a posting date of three years or older or an unbreached Voluntary Departure date beyond the 31 days or more beyond breach event or an expired VD bond not timely breached.

All Aged Bonds files are to be routed to the Bond Backlog Action Team (BBAT) unless:

- A hearing date is scheduled within 180 days
 - VD Bond with a pending 9th or 2nd CCA Petition for Review (PFR)
 - The last action taken on case was within the last thirty (30) days
 - No bond actions are required
 - VD Bond with a BIA appeal pending
 - Classified
- b) Reporting Requirements - An *Aged Bond* monthly report will be submitted to the Bond Management Unit (BMU), reflecting status of all *Aged Bond* cases within each Area of Responsibility (AOR) and the status of each case. This report is due by the 15th of every month. Management of this report should be assigned to your AOR's Bond Control Specialist (BCS) or Deportation Assistant.

21. Missing or Lost A- files

Upon determination that a file is missing or lost the following actions will be taken:

- a. Update the Central Index System (CIS) - The field office must update CIS immediately to reflect that the file is "Lost" which will notify other offices of the file's status.

- b. Request Copies of Bond Documents - Immediately contact the BFC and request copies of all bond documents.
- c. Create a Temporary File (T-file) - Create a T-File using all bond documentation.
- d. Update the National File Transfer System (NFTS) - Update the T-file location in NFTS.
- e. Copies of Other Documents - The field office must attempt to locate any copies of relevant documents, i.e. Enforce, Ident, NCIC, FD-249, OSUP, etc., for inclusion in the T-file.
- f. Bond Action - Upon creation of the T-file, take immediate and appropriate bond actions, demand notices, cancellations, breaches, or continue the bond.
- g. DACS CCOM Update - enter "[date], A-file missing/lost, T-file created [initials]."
- h. T-File Routing - If it is determined that the bond shall be continued, i.e. the alien is placed on an OREC, OSUP, ongoing legal proceedings or a FugOps case, the field office may hold onto the file. If however, the bond is cancelled or breached and the case is no longer active, the T-file shall be immediately routed to the National Records Center (NRC).

BBAT A-File Requests - Upon request of the A-file by the BBAT and if the file is determined to be lost/missing the following actions must be taken:

- a) Update the Central Index System (CIS) - The field office must update CIS immediately to reflect that the file is "Lost" which will notify other offices of the file's status.
- b) Notify BBAT - Notify the BBAT requesting official that the file is missing/lost.

22. Information Management Systems for Bonds

- a) Burlington Financial Center - The BFC is a sub-office of The Office of Financial Management (OFM), located at 166 Sycamore Street, Williston, VT 05495. The BFC is responsible for tracking the financial aspect of bonds. The BFC maintains the bond financial receipts and bond financial data. (<http://ofm.ins/exec/BFC/BFC2.asptfbonds>).
- b) Bond Management Information System (BMIS). The Burlington Financial Center uses BMIS to control the financial aspects of Immigration-bond administration: processing new bonds, cancellations, and breaches; following-up with DRO officers on bond status; accounts receivable; debt collection, etc.

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(The Burlington Financial Center refers delinquent debt to Financial Counsel. If Financial Counsel is unsuccessful, the debt may be referred to Department of Justice for litigation or bond settlement or to the U.S. Treasury for further action.)

- c) BMIS Access - To obtain access to the BMIS database, complete the Request for "View-Only" Access form (see http://ofm.ins/static/pdf/BMIS_Request.pdf). Simply provide your office location, PICS user ID, signature, and your supervisor's authorizing signature. Once you have access, refer to *Bond Management Information System: Instructions for Field Users with View-Only Access*.

23. Bond Absconder

- (a) Bond Absconder Defined - An alien released on bond, in immigration proceedings and is not subject to a final order of removal, deportation or exclusion and whose bond has been breached.
- (b) Warrant of Arrest of Alien, Form 1-200 - Upon completion of the Notice of Breached Bond, form 1-323 an 1-200 will be completed for execution by the non-detained officers.
- (c) Apprehension Requirement - Immediately upon completion of the bond breach actions the file is to be routed to the local non-detained docket officers for immediate apprehension of the alien. Update the A- file and DRO databases with information regarding the attempt(s) to locate and apprehend the bond absconder.
- (d) Chief Counsel Notification - Upon breaching of the bond notify the Chief Counsel's office with jurisdiction over the immigration case. The immigration case may be impacted by the alien's conditions of release violation. Update DRO databases of this notification accordingly.
- (e) Custody Determination - Upon arrest of a Bond Absconder the FOD will make a new custody determination taking into account the alien's breached bond(s).
- (f) Bond Absconder Report - All field offices will submit a report to the BMU by the 15th of each month. This report will include apprehended Bond Absconders by Name, A-number, Criminal/non-criminal, and nationality.

24. Fugitive Operations (FUGOPS)

- a) Fugitive Alien Defined - National Fugitive Operations Program (NFOP) has defined a fugitive alien as, "An alien who has failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or who has failed to report to a Detention and Removal Officer after receiving notice to do so."

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- b) Fugitive with an Open Bond - An open bond on an alien subject to a final order of removal, deportation or exclusion does not change an alien's fugitive status.
- c) Post Order Custody Determination - Upon issuance of a final order of removal/deportation, and although the alien may have posted a bond prior to issuance of that order, he/she must comply with that order or report to the nearest DRO office to have their post order custody determined. If it is determined that the final order alien is eligible for release pursuant to 8 CFR § 1241.4, then pursuant to 8 CFR 241.5(a) he/she *shall* be released pursuant to an order of supervision and may also have the additional compliance tool of an Order of Supervision Bond (OSUP Bond) placed upon him/her. (Any previous outstanding bond will be cancelled once the alien has been taken into ICE custody and a new bond must be posted.)
- d) Voluntary Departure Fugitive - Failure to post a VD Bond within five days of the order or failure to depart on or before the date of voluntary departure expires, constitutes a violation of the conditions as set forth upon the granting of voluntary departure. Therefore, the violation results in a breach of the bond and the alien being subject to a final order of removal being the date after day the voluntary departure expired and the alien is now a fugitive alien.
- e) Apprehension of bonded alien - An alien may be taken into custody at any time subsequent to bond posting if at anytime it has been determined it is to the agency's interest, or that the alien has violated the conditions of his/her release (8 CFR §241.1(0)(1) & (2)).
- f) Demands and Pending Federal Litigation - Federal litigation of immigration proceedings generally involves a petition to review the Immigration Judge's administrative decision for legal sufficiency. This petition may also include a request for a stay of removal, or a petition for a stay of removal may be filed separately. Pursuant to policy established by the NFOP, if an alien has received a final order (8 CFR §1241.1), that alien should be taken into custody. If it is determined that the final order alien is eligible for release pursuant to 8 CFR §1241.4, then pursuant to 8 CFR §241.5(a) he/she *shall* be released pursuant to an order of supervision and may also have the additional compliance tool of an Order of Supervision Bond (OSUP Bond) placed upon him/her. (Any previous outstanding bond will be cancelled once the alien has been taken into ICE custody and a new bond must be posted.)

Those aliens with a delivery bond and subject to a final order, with or without a stay of removal or a petition for review by the CCA, shall have a Notice to Obligor to Deliver Alien, Form 1-340, served upon the obligor to present the alien. (The Field Office Director shall have the discretion of the service of the demand notice prior to the FUGOPS Team attempting to locate and apprehend the fugitive alien.) Upon appearance or apprehension of the alien, he/she shall be processed in accordance with previous bond memoranda (See BMU website). Post order custody shall be determined in accordance with the citation

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above (except those aliens reporting on a current and valid OSUP or as otherwise advised by Chief Counsel).

25. Alternatives to Detention (ATP)

Questions regarding bonds and ATD must be directed to the HQ ATD unit. (ATD programs are additional compliance tools available to the field. The bond policies and procedures must be adhered to when used in conjunction with other programs.)

26. Bond Control Specialist duties/responsibilities

- a) General - The mission of a Bond Control Specialist (BCS) is to manage, monitor and overall quality control of bonds in their field offices Area of Responsibility (AOR). The *AOR will refer to the field office and all offices that are under the jurisdiction of that field office* to which they are assigned. The BCS will be able to make proper bond determinations such a breach, cancel, or if the bond should continue in place. To make these determinations the BCS should have a thorough understanding of bond policies and procedures, as well as the laws and regulations that govern them. They should ensure the completeness and accuracy of all bond actions within their AOR. The BCS should be the bond subject matter and technical expert. They are to ensure the timeliness of bond case actions (case call-ups) upon change in alien's status i.e. final order rendered, VD granted, case administratively closed, etc. (see Position Description, dated March 31, 2005) The BCS will serve as the liaison to the Headquarters Bond Management Unit (HQBMU), Burlington Finance Center (BFC), and Administrative Appeals Office (AAO).
- b) Case Management - The BCS is responsible for oversight and management of bond cases, which are assigned to their AOR. These duties can include the review and determination/adjudication on bond cases that present motions; making decisions which involve points of law, regulations, and policy/procedure. The BCS is responsible to ensure the timeliness of actions of all bond cases within their AOR. They are to ensure that all adjudications or officer required actions taken when any change in the alien's status, custody conditions, and/or newly gathered information requiring updated bond and custody re-determination.
- c) Liaison Duties - The BCS is the primary contact point on bond issues with the HQBMU, BFC, BBAT and AAO. (If the office does not have a BCS a Supervisor or manager should make contact with these entities.) The BCS must ensure that all HQBMU is notified of the office's personnel contact information for those involved in the bond process and the implementation of changes and updates of bond policy/procedures. It is imperative that the BCS ensure that all HQBMU requests to the field are expeditiously and accurately responded too.

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- d) Appeals coordinator - The BCS will review for quality control all bond appeals and ROP's, as well as ensure that rebuttals/responses to those appeals (see §12.8(c); (k)) are included and served to the AAO.
- e) Administrative Duties - The BCS will review all incoming and outgoing bond cases to ensure that appropriate bond actions have been taken. This includes FCO transfers, bond adjudication decisions, appeals, appropriate file routing (Fugitive Operations, Non-detained, NRC, etc.), appropriate service of notices of actions, etc. The BCS is responsible to ensure all bond logs are complete and accurate.
- f) Report Requirements - The BCS will create monthly reports of all bond actions, activities; to include numbers of breaches, cancellations, continuations, and postings, as well as the dollar amounts involved with each category. Locally generated error reports should be generated indicating the various types of errors found in the course of his/her bond quality control duties. These reports should help reflect office bond activities, volume and bond activity quality. The reports are to be forwarded to the Field Office Director or his/her designee and available to HQBMU upon request.
- g) PRO Databases - The BCS is also responsible for the quality control of DACS bond data properly and completely being inputted into the appropriate fields. The BCS is responsible for all outstanding bond cases reflected in DACS in his/her AOR and therefore it is imperative for the BCS to ensure that all bond cases no longer in their AOR are properly transferred out of that FCO and the BFC notified of that change.

(Although this memorandum is not inclusive and does not provide details on each aspect of the posting and management of an immigration bond, it attempts to provide the most current and relevant information available. The Bond Management Unit (BMU) will continue to provide updates, clarification and guidance. Please direct your questions regarding this guidance via e-mail to Bond Management Unit at (b)(7)(E) @DHS.GOV.)