

§ 113.2

Treasury Department Order No. 165 Revised, as amended (T.D. 53654, 19 FR 7241, November 6, 1954), may by regulation or specific instruction require, or authorize the port director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

§ 113.2 Powers of Commissioner of Customs relating to bonds.

Whenever a bond is required or authorized by law, regulation, or instruction, the Commissioner of Customs may:

(a) Prescribe the conditions and form of the bond and fix the amount of penalty, whether for the payment of liquidated damages, or of a penal sum, except as otherwise specifically provided by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond, the conditions of which shall extend to and cover similar cases of importations over a period of time, not to exceed one year or such longer period he may fix, when in his opinion special circumstances warrant a longer period.

(d) Authorize the taking of a consolidated bond (single entry or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulation, or instruction. Such a consolidated bond shall have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of Customs may fix the penalty for violation of a consolidated bond without regard to any other provision of law, regulation, or instruction.

§ 113.3 Liability of surety on a terminated bond.

The surety, as well as the principal, remains liable on a terminated bond for obligations incurred prior to termination.

§ 113.4 Bonds and carnets.

(a) *Bonds.* All bonds required to be given under the Customs laws or regulations shall be known as Customs bonds.

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(b) *Carnets.* A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in part 114 of this chapter, are ordinarily acceptable without posting further security under the Customs laws or regulations requiring bonds.

Subpart B—Bond Application and Approval of Bond

§ 113.11 Bond approval.

Each person who is required by law, regulation, or specific instruction to post a bond to secure a Customs transaction or multiple transactions must submit the bond on Customs Form 301. If the transaction(s) will occur at one Customs port, the bond shall be filed with and approved by the director of that port where the transaction(s) will take place. If the transactions will occur in more than one port the bond may be filed with and approved by any port director. Only one continuous bond for a particular activity will be authorized for each principal. The port director will determine whether the bond is in proper form and provides adequate security for the transaction(s). A bond relating to repayment of an erroneous drawback payment containing the bond conditions set forth in § 113.65 shall be filed with the appropriate drawback office for approval.

§ 113.12 Bond application.

(a) *Single entry bond application.* In order to insure that the revenue is adequately protected the port director may require a person who will be engaged in a single Customs transaction relating to the importation or entry of merchandise to file a written bond application which may be in the form of a letter. The application shall identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or with the entry, or when the entry summary is filed at the time of entry, an application will not be required.

(b) *Continuous bond application.* If a person wants to secure multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a bond application, which may be in the form of a letter, shall be submitted to the port director.

(1) *Information required.* The application shall contain the following information:

(i) The general character of the merchandise to be entered; and

(ii) The total amount of ordinary Customs duties (including any taxes required by law to be treated as duties) accruing on all merchandise imported by the principal during the calendar year preceding the date of the application, plus the estimated amount of any other tax or taxes on the merchandise to be collected by Customs. The total amount of duties and taxes shall be that which would have been required to be deposited had the merchandise been entered for consumption even though some or all of the merchandise may have been entered under bond. If the value or nature of the merchandise to be imported will change in any material respect during the next year the change shall be identified. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(2) *Application updates.* If the port director approves a bond based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond shall submit a new application containing an update of the information required by paragraph (b)(1) of this section. The new application shall be filed no later than 30 days after the new facts become known to the principal.

(c) *Certification.* Any application submitted under this section shall be signed by the applicant and contain the following certification:

I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best

information available on the date of this application.

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any Customs bond shall not be less than \$100, except when the law or regulation expressly provides that a lesser amount may be taken. Fractional parts of a dollar shall be disregarded in computing the amount of a bond. The bond always shall be stated as the next highest dollar.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, the port director or drawback office in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) should at least consider:

(1) The prior record of the principal in timely payment of duties, taxes, and charges with respect to the transaction(s) involving such payments;

(2) The prior record of the principal in complying with Customs demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of Customs and other laws and regulations;

(3) The value and nature of the merchandise involved in the transaction(s) to be secured;

(4) The degree and type of supervision that Customs will exercise over the transaction(s);

(5) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages; and

(6) Any additional information contained in any application for a bond.

(c) *Periodic review of bond sufficiency.* The port directors and drawback offices shall periodically review each bond filed in their respective port or drawback office in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations. If the port director or drawback office determines that the bond is inadequate, the principal shall be immediately notified in writing. The principal shall have 30 days from the date of notification to remedy the deficiency.