

Questions and Answers on CUSTOMS BONDS

What is a Customs bond?

A Customs bond is a contract that is given to insure the performance of an obligation or obligations imposed by law or regulation. A bond is like an insurance policy that is paid to the U.S. Customs Service if a required act is not performed. Bonds have a number of uses in the Customs Service. The most common use allows importers to take possession of their goods before all Customs formalities are completed. Another common use allows a carrier to move goods that have not been entered from one place to another.

All parties that import merchandise into the United States for commercial purposes or transport imported merchandise through the United States must have a Customs Bond.

What is Customs legal authority to require bonds?

The United States Customs Service has the authority to require bonds under title 19, United States Code, section 1623. Most Customs bonds are taken under that authority. In addition, there are a few statutes that specifically require Customs to get a bond from a person who wants to engage in certain transactions.

Who are the parties to a Customs bond?

Usually, there are three parties to a Customs bond: the *principal*, the *surety* and the *beneficiary*. The principal on a Customs bond can be an importer, a broker, a carrier, a bonded warehouse proprietor, a foreign trade zone operator or any one of a number of other parties that seek to do business with Customs. The principal gives the bond to Customs to insure satisfactory performance of obligations that it undertakes. The surety is normally an insurance company that has been authorized by the Department of the Treasury to write Customs bonds. The surety agrees to pay any liability that might arise from the principal's failure to perform its obligations. The principal and surety are also known as the bond obligors. The U.S. Customs Service is the beneficiary on all the bonds it authorizes.

The specified sum of money that is set forth in the bond constitutes the damages suffered by the U.S. Customs Service as a result of the principal's failure to perform the required obligation. That sum, because the amount is set, is known as *liquidated damages*. The U.S. Customs Service has the authority to require bonds under Title 19, United States Code, section 1623, and most Customs bonds are taken under that authority. In addition, there are a few statutes that specifically require the U.S. Customs Service to get a bond from a person who wants to engage in certain transactions.

What formalities are associated with a Customs bond?

Customs bonds must be in writing and be signed by the bond obligors. To reduce the possibility of error, the signature of a bond obligor who signs as an individual must be witnessed by two other persons. Since a corporation is a legal person rather than a natural person, a different means of identification is used for a corporation. A corporate officer, whose authority to sign for the corporation is shown by a document known as a power of attorney, may sign a Customs bond for the corporation. Sometimes the law of the state where the corporate officer signs requires bonds signed for a corporation to have a seal affixed. Some corporate charters require that any bond to which the corporation is a party must have a seal affixed. Customs bonds need not be sealed unless the law of the state or the corporate charter or governing by-laws require one. These requirements apply to bond principals and sureties.

What are the obligations of the parties and where are they found?

Customs bonds are intended to reflect the obligations associated with the type of Customs transaction engaged in by the bond principal. An importer of merchandise has different legal obligations to the Government than does a custodian such as a carrier, a cartage operator, or a warehouse proprietor who does not own the merchandise that is being stored or transported. A person who make a claim for drawback under the exporter's summary procedure or who requests accelerate payment of drawback has a different set of obligations to the Government than does a master of a vessel which arrives in the United States from a foreign country.

Customs bond conditions appear in the Customs Regulations at title 19, Code of Federal Regulations (CFR), Subpart G of Part 113. The Customs Form 301 that is signed by the bond principal and surety employs a check-off that incorporates the bond text by reference. Bond conditions impose obligations that are otherwise required by statute or regulation. For example, an importer's bond obligations require him, among other things, to pay duties and submit entry summary documentation at the times required by regulation, and to redeliver merchandise to Customs upon a lawful demand.

What happens if the obligations under the bond are not met?

If a principal fails to perform its obligations under the bond, liquidated damages are owed to Customs. The amount of liquidated damages is established by the conditions of the bond. Both the bond principal and surety are "jointly and severally" liable for liquidated damages. In no case can a claim for liquidated damages exceed the amount of the bond that appears on the Customs Form 301.

If the bond principal cannot or will not perform its obligations, Customs can make demand for payment of liquidated damages on both the principal and the surety. Customs will accept payment from either party in satisfaction of the claim. If the surety pays Customs, it can make a claim for payment against its principal, but Customs is not a party to that transaction.

What are the main types of bonds?

Continuous Bond

A continuous bond is normally obtained by importers who have a large number of entries and/or imports through several ports of entry during a given year. A continuous bond is valid until it is terminated by the surety or the principal. It does not have to be renewed each year. The minimum bond amount for continuous bonds will be \$50,000 or 10 percent of the total taxes and fees paid in the previous 12-month period whichever is greater. Please note that all bond amounts will be rounded up to the next whole dollar amount in multiples of \$1000.

Single Entry Bond

Importers obtain a single entry bond for a single shipment. It covers only the entry or transaction for which it was written. The bond amount for a single entry bond is not less than the total entered value plus all duties, taxes, and fees. If merchandise is subject to other federal agency requirements or is restricted merchandise, the bond amount set is not less than three times the total entered value of the merchandise.

Where can I get a bond?

Treasury Department Circular 570, which is published annually, is a list of Treasury approved, certified surety companies. The most current list of Treasury authorized companies is available through their Web site at <http://www.cbp.gov>. In addition, applicable laws and regulations are also available at the same site.

Where are Customs bonds filed?

The bond which insures the repayment of an erroneous payment of a drawback claim (section 113.65, Customs Regulations, as amended by T.D. 84-213) is filed with the appropriate drawback office for approval. (A list of drawback unit/offices can be found at the end of this brochure under the section listing the Customs Management Centers.)

If the transaction occurs at one Customs port, a single entry bond should be filed in that port. If multiple transactions will occur in more than one port, a continuous bond may be filed with any port director.

How is a particular Customs bond selected for a transaction?

Customs bonds are keyed to specific types of Customs transactions. The bond conditions must therefore vary with the type of activity sought to be secured by a bond. An importer of merchandise has different legal obligations to the Government than does a custodian such as a carrier, a cartage operator, or a warehouse proprietor who does not own merchandise. A person who makes a claim for drawback under the exporter's summary procedure or who requests accelerated payment of drawback has a different set of

obligations to the Federal Government than does a master of a vessel which arrives in the United States from a foreign country. Customs bonds are intended to reflect the obligations associated with the type of Customs transaction engaged in by the bond principal. The bond conditions specify the performance that is expected from the bond obligors. Included in those performance requirements are the sums to be paid if the required acts are not performed.

In an attempt to increase use of automated data processing of Customs bonds and to provide one permanent source of information on bond conditions, Customs published the conditions of virtually all Customs bonds in Subpart G of Part 113 of the Customs Regulations (T.D. 84-213). The form that is signed by the bond principal and surety employs a check off that incorporates the bond text by reference. Bond conditions do not impose any obligations other than to insure performance of the substantive requirements specifically imposed by a statute or regulation.

What provides the security on a Customs bond?

Corporate sureties

The usual method of security on a Customs bond is a *corporate surety* that is authorized by the Financial Management Service to act as surety on Government bonds. A list of such sureties is published as Treasury Department Circular 570. An annual version of this list is published in the Federal Register on or about the first of July each year and is updated throughout the year by subsequent notices in the Federal Register. For further information on Circular 570 and for the requirements for corporate sureties, inquiries should be directed to: Surety Bond Branch, Financial Management Service, 3700 East-West Highway, Hyattsville, MD 20782; telephone: 202.874.6850, fax: 202.874.9978.

Cash or other

Another alternative to employing an authorized corporate surety is for the bond principal to *pledge cash or other United States Government obligations* (Treasury bills, notes, or bonds other than U.S. Savings Bonds). The bond form is modified to reflect the change from a surety to a pledge of assets. If U.S. Treasury bills, notes, or bonds are pledged, the

bond principal/pledgor is entitled to the interest or discount. No interest is paid on pledged cash.

A disadvantage of this alternative is that the Customs Service must hold the pledge until the bond is satisfied or canceled. On a bond given to satisfy entry requirements, this pledge period does not end until two years after the entry is last liquidated. In the case of entries of merchandise valued at \$500 or less, the pledge is returned after liquidation, assuming that the bond was not breached. In the case of merchandise that is temporarily imported under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), the pledge is returned to the bond principal/pledgor upon showing that the merchandise was exported or destroyed properly.

What do "termination" and "cancellation" mean?

Termination of a bond means that the term of the bond has elapsed. It has no effect on any obligation charged against the bond before termination. Cancellation of a bond means not only that the bond is terminated but, in addition, that all claims against the bond are annulled or wiped out.

Where are Customs offices located?

Customs Management Centers

(* Denotes a drawback unit/office)

Baltimore, MD 21202 / 103 South Gay Street

Boston, MA 02222-1056 / 10 Causeway Street *

Buffalo, NY, 14225 / 4455 Genesee Street

Chicago, IL 60607 / 610 South Canal Street *

College Park, GA 30349 / 1691 Phoenix Blvd.

Detroit, MI 48226 / 613 Abbott Street

El Paso, TX 79925 / 9400 Viscount Blvd.

Houston, TX 77019 / 2323 South Shepard *

Long Beach, CA 90831/ One World Trade Center *

Laredo, TX 78044 / PO Box 3130, Bldg. #2, Lincoln-Juarez Bridge

New Orleans, LA 70130/ 423 Canal Street *
New York, NY (To Be Determined)*
Miami, FL 33131 / 909 SE First Avenue *
Portland, OR 97209 / 511 NW Broadway
San Diego, CA 92101 / 610 West Ash Street
San Francisco, CA 94105 / 33 New Montgomery Street *
San Juan, PR 00901 / #1 La Puntilla Street
Seattle, WA 98104 / 1000 Second Avenue
Tampa, FL 33605 / 1624 East Seventh Avenue
Tucson, AZ 85705 / 4740 North Oracle Road

U.S. Customs Port Offices

The address for U.S. Customs port offices can be found in the government pages of your local telephone directory. The U.S. Customs Service is found under the heading for Treasury. Addresses and telephone numbers can also be found on the Customs Web site at www.cbp.gov.

Where can further information be obtained?

Questions on the legal effects of a Customs bond or the scope or meaning of the language in a Customs bond should be sent to:

Chief, Entry Procedures and Carriers Branch
Office of Regulations and Rulings
U.S. Customs Service
1300 Pennsylvania Avenue, NW
Washington, DC 20229