

CUSTOMS BONDS: QUESTIONS AND ANSWERS

What is a Customs bond?

A Customs bond is a contract which is given to insure the performance of an obligation imposed by a law or regulation.

Who are the parties to a Customs bond?

Unless assets are pledged in lieu of surety, usually there are three parties to a Customs bond: *principal*, *surety*, and the *beneficiary*: U.S. Customs Service. The principal on a Customs bond gives the bond to the U.S. Customs Service to insure the satisfactory performance of the principal's obligation. The U.S. Customs Service is the beneficiary of a Customs bond. The surety on a Customs bond agrees to pay a specified sum of money to the U.S. Customs Service if the principal fails to perform the required obligation satisfactorily.

The specified sum of money which 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 are the obligations of the parties?

Customs bonds usually have a third party to the contract called a surety who agrees to pay the beneficiary a liquidated sum if the conditions of the bond are not met by the principal. It is important to note that the surety has a primary obligation to the beneficiary. Thus, if the principal agrees to submit entry documents to Customs (the beneficiary on the bond) within 10 days or pay liquidated damages of \$1000 and does not submit the documents, the surety and the principal are equally liable for the \$1000. Customs does not have to prove that the principal cannot or will not pay; the surety is liable if Customs shows that the principal did not perform or pay. This point usually is expressed by saying that the surety is primarily and jointly liable on the bond. Of course, when the surety pays, it has a claim against the principal. The principal and surety are also called the *bond obligors*.

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. Customs bonds need not be sealed unless the laws of the State or the corporate charter or governing by-laws so require. These requirements apply to bond principals and sureties.

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 Regional Commissioner of Customs who is to pay that drawback claim. All other Customs bonds that cover a single transaction are to be filed with the District Director of Customs who has jurisdiction over the transaction. Customs bonds that cover multiple transactions can be filed with any District Director of Customs (other than bonds for multiple drawback claims, which are to be filed with any Regional Commissioner of Customs).

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 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 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 which 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. Updated information is also available 24 hours a day on a computerized bulletin board by calling (202) 874-7214. For further information on Circular 570 and for the requirements for corporate sureties, inquiries should be directed to: Surety Board Branch, Financial Management Service, 3700 East-West Highway, Hyattsville, MD 20782; tel. (202) 874-6850, fax (202) 874-9978.

Personal sureties:

Another method is to use *personal sureties*. The Customs Regulations require that there must be two personal sureties on a Customs bond. The financial status of each personal surety is investigated by the Customs Service and is checked at least every 6 months of the period that the bond remains in force. In order to qualify as a personal surety the surety must be a United States citizen and resident, have property within the Customs district where the bond is to be accepted, and have no legal disability to act as a surety under the law of the State where the bond is executed.

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 prior to termination. Cancellation of a bond means not only that the bond is terminated, but also that all claims against the bond are annulled or wiped out.