

CUSTOMS DIRECTIVE

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CUSTOMS DIRECTIVE NO. 3510-004

OLD NUMBER: 3510-04

ISSUE DATE: JULY 23, 1991

SUBJECT: MONETARY GUIDELINES FOR SETTING BOND AMOUNTS

1. PURPOSE

To update the Customs Directive on Revised Specific Monetary Guidelines for Setting Bond Amounts, dated January 14, 1991.

2. BACKGROUND

On February 7, 1986, guidelines were established for setting bond amounts in Customs Directive 3510-01 or 02, "Specific Monetary Guidelines for Setting Bond Amounts." This Directive provided for an interim evaluation to modify these guidelines if needed. A new Directive was issued on January 14, 1991, to modify these guidelines.

3. ACTION

- A. The amount of a bond shall be set by utilizing information on the bond application prescribed in Section 113.12, Customs Regulations (CR), in conjunction with the criteria set forth in Section 113.13 CR, and the guidelines attached to this Directive.
- B. The purpose of the bond is to protect the revenue and ensure compliance. Examples include redelivery of merchandise, marking, proper record-keeping, etc. However, it is not Customs intent to require bond amounts which unnecessarily put an excessive burden on a person or firm, or place them in an impossible situation.
- C. The process of setting bond amounts is straightforward in most situations, but in others, judgment and discretion are necessary.

4. RESPONSIBILITIES

District and Area Directors are responsible for following these guidelines within their jurisdiction and making this Directive available to the public. Regional Commissioners are responsible for seeing that the guidelines are applied consistently within their respective regions.

5. SUPERSEDES

This Directive supersedes Customs Directive 3510-03, "Revised Specific Monetary Guidelines for Setting Bond Amounts," issue date January 14, 1991.

Assistant Commissioner
Office of Commercial Operations

Attachment

Distribution:

- R-01 Regional Commissioners
- F-01 District/Area Directors
- F-02 Port Directors
- G-07 All Entry Personnel
- G-19 All Customs Inspectors
- G-20 All Import Specialists

Guidelines for Determining Amounts of Bonds

INTRODUCTION

To require excessive security where it serves no valid purpose places an unnecessary burden on international trade and commerce. Judgment and discretion are important ingredients in the process of setting bond amounts. While discretion is an important aspect in setting bond amounts, the principles of national uniformity or standardization must also be followed regardless of the particular technique or formula used to determine bond amount. Setting the amount of a bond must not be an arbitrary action.

Since all districts are directed to use the same criteria to set bond amounts, a continuous bond in the amount approved by one district shall be honored by all districts unless any district director is aware that either extraordinary circumstances or a greater risk to the government is involved. When such extenuating circumstances are involved, the district director with such knowledge shall contact the district where the bond is filed and convey the supporting facts so that appropriate action, if required, can be taken. For example: When the amount of a continuous bond does not cover the duty on a particular shipment and the district director suspects that a greater risk to the government is involved, the district director shall:

1. secure, at the time of release, deposit of the estimated duty due on the shipment, or
2. request a single entry bond for that shipment, or
3. request that a new continuous bond in a higher amount be filed.

The district director should use discretion in situations where an importer infrequently imports high value shipments and the amount of the continuous bond does not cover the duty on a particular shipment. When a single entry bond is requested in these circumstances, the bond limit of liability may be for the total amount of duty, taxes and fees only.

When a firm conducts business in more than one district, setting and maintaining adequate bond coverage must be a collaborative effort. This effort will become smoother as more definitive data related to bonds and risk of loss or non-compliance become available from the ACS modules which interact with the bond module.

Activity 1 - Importer or Broker - Continuous

The bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given. The non-

discretionary bond amount minimum is \$50,000. To assist the district director in fixing the limit of liability amount, the following formula shall be used.

None to \$1,000,000 duties and taxes - the bond limit of liability amount shall be fixed in multiples of \$10,000 nearest to 10 percent of duties, taxes and fees paid by the importer or broker acting as importer of record during the calendar year preceding the date of the application.

Over \$1,000,000 duties and taxes - the bond limit of liability amount shall be fixed in multiples of \$100,000 nearest to 10 percent of duties, taxes and fees paid by an importer or broker acting as importer of record during the calendar year preceding the date of the application.

In either of these two categories a bond may be demanded with a limit of liability amount greater than that computed using this formula, provided sufficient evidence of high risk is on-hand to support the higher amount.

Bond amounts computed with this 10 percent formula also apply to importations of restricted merchandise unless specific instructions issued mandate otherwise.

If no imports were made during the preceding calendar year, the bond limit of liability amount will be fixed based on the duties, taxes and fees which the applicant estimates will accrue on imports during the calendar year, provided that the district director is satisfied with the accuracy of the estimate. In no event shall the limit of liability amount of any continuous Activity Code 1 bond be less than \$50,000.

However, when little or no duties, taxes, and fees are involved and the \$50,000 bond minimum amount is not deemed sufficient, as an option, the bond limit of liability amount may be fixed at one-half of 1 percent of the value of importations applicable to an annual period.

Activity 1 - Importer or Broker - Single Transaction

- a. Generally, a single transaction, Activity Code 1, Importer or Broker bond (for a consumption entry, immediate delivery, to cover articles entered or withdrawn from a warehouse, etc.) will be executed in an amount not less than the total entered value plus all duties, taxes, and fees which apply, unless the merchandise being imported falls into one of the following categories. In these cases, the bond will be executed in an amount which is not less than three times the total entered value of the merchandise.
 1. **MERCHANDISE SUBJECT TO OTHER AGENCY REQUIREMENTS WHERE FAILURE TO REDELIVER COULD POSE A THREAT TO THE PUBLIC HEALTH AND SAFETY**
 - A) Food and Drug Administration (FDA) - All

- B) Environmental Protection Agency (EPA) - All
- C) Bureau of Alcohol, Tobacco and Firearms (BATF) - Alcoholic Beverages and Distilled Spirits Only
- D) Consumer Products Safety Commission (CPSC) - Toys and Fireworks only if sampled by Customs for CPSC testing
- E) Department of Agriculture, Agricultural Marketing Service (AMS) - Subject to marketing orders
- F) Federal Communications Commission (FCC) - All
- G) Toxic Substances Control Act (TOSCA) - All

2. ALL MERCHANDISE SUBJECT TO QUOTA AND/OR VISA REQUIREMENTS

In cases in which the entry includes merchandise which falls into the above categories, and merchandise which does not, the district director may set the bond amount equal to three times the total entered value of the merchandise which falls into the specified categories, plus the total entered value and all duties, taxes, and fees which apply, for the remainder of the merchandise.

In addition, the district director may set the single transaction bond amount at 10 percent of the total entered value for unconditionally free merchandise, which is not subject to the above categories.

The district director has the authority to accept a single transaction bond unsecured by surety or other means for an entry after making a potential risk assessment (for example, an entry with a total entered value of \$10,000 or less with no revenue implications, no other agency requirements, and no chance of requiring redelivery). Each case should be determined individually; however, continuous bonds without surety or other security are not acceptable. In such individual cases, the importer will be required to execute the bond in an amount equal to the value of the merchandise being imported, unless the district director deems a greater or lesser amount is necessary to accomplish the purpose for which the bond is given. If the importer defaults on any of the bond conditions, liquidated damages will be assessed in accordance with Subpart G, Part 113 CR.

- b. When the bond is given to cover articles for exhibition, the bond limit of liability amount shall be fixed in an amount equal to the estimated duties, as determined at the time of entry. If the commodity would otherwise be free of duty, the bond liability amount shall include one times the merchandise processing fee, or \$100, whichever is greater, if MPF is applicable.

- c. When the bond is for a trade fair operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given.
- d. When the bond is for a temporary importation, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to protect the revenue, but not less than an amount equal to double the duties which it is estimated would accrue had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders, motion picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the bond limit of liability amount shall be 110 percent of the estimated duties. Taxes and special duties (for example, IR taxes, antidumping and countervailing duties, etc.) shall be taken into account in all computations.

If the commodity would otherwise be free of duty, the bond liability amount shall include one times the merchandise processing fee or \$100, whichever is greater, if MPF is applicable.

- e. When the bond is to secure the payment of overtime services requested by or on behalf of parties in interest, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to secure the payment of the amount due.
- f. When the bond is for the importation of flammable fabrics, the bond limit of liability shall be fixed in an amount equal to triple the value of the merchandise.
- g. When the bond is for the conditionally free withdrawal of distilled spirits (including alcohol), wines, or beers for supplies of fishing vessels, the bond limit of liability shall be fixed in an amount equal to the duties, taxes, and fees that would have been assessed had the supplies been regularly entered or withdrawn for consumption.
- h. When the bond is for entry of merchandise found or believed by the U.S. International Trade Commission to involve unfair practices or methods of competition, the bond limit of liability amount shall be fixed in an amount determined by that Commission.
- i. When the bond is for the actual owner whose declaration has been filed pursuant to section 485(d), Tariff Act of 1930, as amended (19 USC 1485(d)), the bond limit of liability amount shall be fixed in an amount either equal to the amount of the single transaction bond related to the entry, or if the bond related to the entry was a continuous bond, in an amount equal to the amount a single transaction bond would have been.

Activity Ia - Drawback Payment Refunds Continuous

When the bond is for accelerated payment of drawback, the bond limit of liability amount shall be fixed in an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during an annual period.

When the bond is for drawback claims using the exporter's summary procedure the bond limit of liability amount shall be fixed in an amount equal to 25 percent of the drawback claimed on entries filed by the principal (exporter-claimant) during an annual period.

When the bond is for both accelerated payment of drawback and claims using the exporter's summary procedure the bond limit of liability amount shall be fixed at an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during an annual period, or much larger amount the district director may deem necessary to afford ample protection of the revenue.

Activity 1a - Drawback Payment Refunds - Single Transaction

The bond limit of liability amount for accelerated payment of drawback shall be equal to the amount of accelerated payment to be received on the entry covered.

Activity 2 - Custodian of Bonded Merchandise

When the bond is for a bonded warehouse operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000 on each building or area covered by the bond. Note: In determining the bond amount for a warehouse which will be used to store distilled spirits, consideration must be given to the fact that the warehouse proprietor is liable for both the duty and tax on distilled spirits missing from the warehouse. When the bond is for the carriage of merchandise by common carriers, contract carriers, and freight forwarders, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000 in the case of motor and air carriers and in an amount not less than \$50,000 in the case of other carriers.

When the bond is for a container station operator, independent of either the importing carrier or bonded carrier, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a Centralized Examination Station (CES), the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a customhouse cartage or lighterage operation, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a private carrier operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given.

When the bond is to secure the payment of overtime services requested by or on behalf of parties in interest, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to secure the payment of the amount due.

When the bond is for more than one kind of custodial operation, the bond limit of liability shall be fixed in an amount large enough to cover the combined operations. For instance, if a bonded warehouse and container station are covered under the same bond, the bond limit of liability shall be fixed in an amount the district director may deem necessary to accomplish the purposes for which the bond is given, but not less than \$25,000, plus \$25,000 per warehouse building.

Activity 3 - International Carrier - Continuous

When the bond is to secure activities, including requested overtime services, related to the entry or clearance of vessels, vehicles, or aircraft which arrive directly or indirectly from any place outside the customs territory of the United States, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000. In addition, the district director has full responsibility for setting bond limits at higher amounts, up to \$250,000 as deemed necessary, for carriers with past narcotics violations and/or those originating from high-risk drug areas.

Activity 3 - International Carrier - Single Transaction

When the bond is to secure activities, including requested overtime services, related to the entry or clearance of a vessel, vehicle, or aircraft which arrives directly or indirectly from any place outside the customs territory of the United States, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given but not less than \$25,000. If the bond is to secure the landing in foreign ports, by a vessel of less than 500 net tons, of spirits, wines, or other alcoholic beverages not covered by a certificate of shipment, the bond limit of liability amount shall be fixed in an amount equal to double the estimated duty and taxes.

(CHANGE 1/AUG '93)

Activity 3a - Instruments of International Traffic

When the bond is for the control of instruments of international traffic required by Section 10.41a CR and/or clearance of serially numbered substantial holders or outer containers required in Section 10.41b CR, the bond limit of liability shall be fixed at \$20,000, or such larger amount the district director deems necessary to accomplish the purpose for which the bond is given.

Activity 4 - Foreign Trade Zone Operator - Continuous

When the bond is for a Foreign Trade Zone operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$50,000.

Activity 5 - Public Gauger - Continuous

The bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given. Under normal circumstances, the bond limit of liability for Public Gauger and Commercial Laboratory companies who have not been the subject of adverse Customs actions will be based on the number of approved or accredited sites operated by that gauger or laboratory company.

Laboratories or gaugers operating one site are considered small and the bond limit of liability should be not less than \$20,000. Companies operating two to ten sites are considered medium in size and the bond limit of liability should be from \$30,000 to \$50,000. Those companies operating more than ten sites are considered large in size and the bond limit of liability should be from \$100,000 to \$120,000.

Activity 6 - Wool & Fur Products Labeling Acts and Fiber Products Identification Act Importations - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to two times the value of the merchandise involved and duty thereon.

Activity 7 - Bill of Lading - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to one and one-half times the invoice value.

Activity 8 - Detention of Copyrighted Material – Single Transaction

The bond limit of liability amount shall be fixed in an amount appropriate to hold the United States and its employees, and the importer or owner, harmless from any material depreciation of articles detained as alleged to be infringing and from any loss caused by the detention of articles found not to be infringing. Generally, 120 percent of the value of the articles, as set forth in the entry, plus the estimated duties, taxes and fees will be appropriate, but the district director may raise or lower the amount as necessary.

Activity 9 - Neutrality - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to double the value of the vessel and cargo on board.

Activity 10 - Court Costs for Condemned Goods - Single Transaction

The bond limit of liability amount shall be fixed in an amount of \$5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than \$250.