

## *General Notices*

### **19 CFR PART 113**

#### **SPECIFIC INSTRUCTION; BONDS FOR MARINE TERMINAL OPERATORS**

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of specific instruction.

**SUMMARY:** This instruction, issued under the authority granted to the Commissioner of Customs and Border Protection (CBP) under the provisions of 19 USC 1623 and 19 CFR 113.1, requires marine terminal operators to take out a Terminal Operator Bond, the terms and conditions of which are described in this instruction, to provide guarantees of payment in the event that terminal operators incur civil monetary penalties for allowing containers or cargo to be delivered from their terminals without authorization from CBP. Terminal operators that are also international carriers and are holders of international carrier bonds will not be required to take on an additional bond. In lieu of execution of the Terminal Operator Bond, marine terminal operators may take out an International Carrier Bond on a CF-301. Those operators who handle bulk merchandise exclusively are exempt from this requirement.

**EFFECTIVE DATE:** January 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Baskin, Regulations and Rulings, Office of International Trade, CBP, at [jeremy.baskin@dhs.gov](mailto:jeremy.baskin@dhs.gov).

#### **BACKGROUND:**

The provisions of section 623(a) of the Tariff Act of 1930, as amended, (title 19, United States Code, section 1623(a)), state that “in any case where a bond is not required by law, the Secretary of the Treasury may by regulation or specific instruction authorize customs officers to require such bonds . . . as . . . they may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Customs Service<sup>1</sup> may be authorized to enforce.” The provisions of section 113.1 of the Customs and Border Protection Regulations (19 CFR 113.1) autho-

---

<sup>1</sup> Sections 403(1) and 411 of the Homeland Security Act of 2002 (“the Act,” Pub. L. 107-296) transferred the United States Customs Service and certain of its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the “Customs Service” as the “Bureau of Customs and Border Protection,” also referred to as “CBP.”

alize the Commissioner of Customs to require by specific instruction such bonds as described in the underlying statutory authority.

In performing its ongoing responsibility of ensuring the integrity of the supply chain, CBP exercises its authority found in title 19, United States Code, including sections 1431, 1433, 1434, 1436, 1448, 1451, and 1453, over the arrival, entry, manifesting and unloading of cargo to regulate international carriers who arrive from foreign. CBP exercises its examination authority found in title 19, United States Code, section 1499, to regulate parties such as container freight stations and centralized examination stations that take custody of containers and cargo arriving from foreign places. As part of this regulatory process, CBP has required the above parties to post international carrier or custodial bonds to provide CBP with a monetary remedy guaranteed by surety when violations of law or regulation by those bonded parties are discovered.

While marine terminal operators are defined under The Shipping Act of 1984 (46 U.S.C. App. 1702(14)) as persons engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49, United States Code, for purposes of this instruction only those marine terminal operators who engage in commerce with containers and cargo arriving from foreign will be affected. These operators may be public or private entities.

Recently, CBP has detected violations of law when vessel containers and cargo arriving from foreign that are designated for CBP examination for security or other purposes are offloaded from the arriving vessels to marine terminals and then are delivered from those terminals without examination by CBP having occurred. The assessment of civil monetary penalties under the provisions of title 19, United States Code, section 1595a(b) for the introduction of articles into the United States contrary to law against every person who is in any way concerned with this activity may occur. Terminal operators and carriers have been found to be culpable in these situations. It is the view of CBP that to assure compliance with laws prohibiting the delivery of this merchandise from the terminals without CBP authorization contrary to the provisions of title 19, United States Code, section 1448, or without examination contrary to the provisions of title 19, United States Code, section 1499, that terminal operators should be required to post bonds.

CBP acknowledges that many terminals are operated by parties that are also international carriers. Those parties already hold international carrier bonds that guarantee the payment of penalties incurred. They will not be required to post a terminal operator bond in addition to any international carrier bond that they have provided.

In addition, any marine terminal operator may, in lieu of executing the attached terminal operator bond, execute an international carrier bond on the CF-301.

**ACTION:**

All marine terminal operators at ports of entry who engage in commerce with containers and cargo arriving from foreign, except those operators who handle bulk cargo exclusively, are required to post a Marine Terminal Operator bond if they do not have a valid international carrier bond already in force. The terms and conditions of the marine terminal operator bond are attached as an Appendix to this document. The Marine Terminal Operator bond must be filed at the port of entry where the affected terminal is located. If a marine terminal operator has facilities at more than one port, the bond may be filed at any port where the operator has a facility. Separate bonds will not be required for each facility.

The bond attached hereto may be amended by rider or terminated in accordance with CBP Regulations. Any claim arising against this bond is subject to the administrative provisions of Part 172 of the CBP Regulations.

The Marine Terminal Operator Bond limit of liability shall be fixed in an amount the port director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$100,000. Volume of cargo traffic at a terminal may be considered as a factor in setting the bond amount. As deemed necessary, the port director may set a bond limit of up to \$250,000 for marine terminal operators who have incurred violations of allowing cargo to exit the terminal without CBP authorization. If a port director seeks to set a bond limit in excess of \$250,000 based upon the past performance of a terminal operator, this limit may only be set with the concurrence of the Office of Field Operations in CBP Headquarters.

If a marine terminal operator has a current valid international carrier bond, that bond amount will not be changed; however, it may be reviewed for sufficiency at CBP's discretion. All Marine Terminal Operator Bond amounts will be monitored by the Office of Field Operations, CBP Headquarters, to ensure uniformity.

Dated: December 1, 2006

W. RALPH BASHAM,  
*Commissioner of Customs and Border Protection.*

APPENDIX

**TERMINAL OPERATOR BOND**

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ of \_\_\_\_\_, as principal having CBP Identification Number \_\_\_\_\_ and \_\_\_\_\_, as surety are held and firmly bound unto the United States of America up to the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the named principal operates a marine terminal into which containers and cargo from foreign are unladen and are delivered into the commerce of the United States.

Whereas, if the named principal incurs any penalty as provided by law or regulation that relates to the delivery of any cargo or container(s) or both from the terminal operated by the principal without the prior approval of an officer of Customs and Border Protection, the obligors (principal and surety, jointly and severally) agree to pay an amount up to the penal sum upon demand by Customs and Border Protection.

This bond is effective \_\_\_\_\_, 20 \_\_, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the Customs and Border Protection Regulations.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

\_\_\_\_\_  
(Name) (Address)

\_\_\_\_\_  
(Name) (Address) (Principal Name) (Seal)

\_\_\_\_\_  
(Principal Address)

\_\_\_\_\_  
(Surety Name) (Seal)

Surety No. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Surety Mailing Address)

Surety Agent Name \_\_\_\_\_

Surety Agent ID Number \_\_\_\_\_