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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 101, 113, and 133

CBP Dec. 15-15

USCBP-2006-0013

RIN 1515-AD56 [formerly 1505-AB54]

Customs and Border Protection's Bond Program

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations that serve to centralize the processing of continuous bonds at CBP's Revenue Division within the Office of Administration. Upon consideration of comments received from the public in response to the proposed rulemaking, and in light of CBP's ongoing efforts concerning the development of electronic bonds, CBP has determined not to proceed at this time with certain proposed regulatory changes relating to the application, approval, and execution of bonds. CBP has also determined not to proceed with proposals relating to provisions that are the subject of other rulemakings currently under inter-departmental review. In the notice of proposed rulemaking, CBP used the terms "CBP-approved electronic data interchange system" and "electronic filing" to describe the manner by which continuous

bonds may be submitted to CBP. In this final rule, these terms are clarified to reflect that continuous bonds may be scanned and submitted to CBP as an email attachment, or by facsimile. This document also amends the CBP regulations to allow for the filing of single transaction bonds pursuant to these methods. In this rulemaking, CBP also clarifies the CBP regulations to reflect that intellectual property rights sample bonds are posted to protect the importer or owner of the sample, and changes provisions of the international carrier bond regarding the payment of fees. Lastly, this final rule adopts non-substantive amendments to the regulations regarding nomenclature and organizational changes, including editorial changes to enhance general readability, and makes technical corrections to reflect statutory amendments.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE **FEDERAL REGISTER**.]

FOR FURTHER INFORMATION CONTACT: Kara Welty, Chief, Debt Management Branch, Revenue Division, Office of Administration, Tel. (317) 614-4614.

SUPPLEMENTARY INFORMATION:

Background

Proposed rule

On January 5, 2010, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (75 FR 266) a proposal to amend title 19 of the Code of Federal Regulations (19 CFR) regarding CBP's bond program. The proposed amendments to CBP's bond regulations were intended to update and modernize CBP's bond program and centralize the filing, review and approval of continuous bonds at CBP's Revenue Division, Office of Administration, in Indianapolis, Indiana, which assumes the bond

functions previously performed at the port level. In that document, CBP also proposed to amend § 113.64, which prescribes international carrier bond conditions, to state that an obligor must pay liquidated damages for failure to timely submit to CBP passenger processing fees that were required to be collected. In addition, CBP proposed to amend the regulations in part 133 to reflect that bonds relating to allegations of counterfeit trademarks are permitted to be continuous bonds.

Bond final rule separate and distinct from eBond test

Title VI of the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057 (Dec. 8, 1993), establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. CBP is currently conducting a voluntary NCAP eBond test. In a general notice published in the **Federal Register** (79 FR 70881) on November 28, 2014, CBP described the terms and conditions of the eBond test which provides for the transmission to the Automated Commercial Environment (ACE) of electronic bond contracts (eBonds) between principals and sureties, with CBP as the third-party beneficiary, for the purpose of linking those eBonds to the transactions they are intended to secure (eBond system). The test deployed on January 3, 2015, and a modification to the test was published in the **Federal Register** (80 FR 899) and went into effect on January 7, 2015.

The eBond test is separate and distinct from this bond final rule. In this regard, it is noted that the eBond test pertains to electronic bonds that are not submitted on the CBP Form 301 and that are transmitted through an electronic data interchange to ACE to secure a limited subset of ACE entry types. The bond regulations contained in this final

rule, however, pertain to all entry types and provide for the filing of both continuous bonds and single transaction bonds primarily on the CBP Form 301. As a result of this rule, CBP Form 301 bonds may be scanned and emailed to CBP as a computer file attachment (i.e., in a .pdf or a .tif format), or submitted by facsimile (fax) or mail. Bonds emailed or faxed to CBP on the CBP Form 301 are not submitted via a “CBP-approved electronic data interchange system” in that they do not constitute a computer-to-computer interchange of strictly formatted messages. To clarify this fact, this final rule no longer refers to CBP Form 301 bonds, or the submission of bonds outside of the eBond test, as “electronic” or submitted or filed “electronically” or via a “CBP-authorized electronic data interchange system.” Moreover, as bonds may still be submitted to CBP outside of the eBond test, it is important to note the following:

- Non-eBond test participants must adhere to the regulatory provisions set forth in Chapter 1 of title 19 of the Code of Federal Regulations.
- For eBond test participants, the regulatory provisions set forth in Chapter 1 of title 19 of the CFR are suspended to the extent that they conflict with the terms of the eBond test.

Amendments suggested by commenters

This final rule adopts changes suggested by commenters in response to the proposed rulemaking that are a natural outgrowth of that document. Specifically, the changes:

- Permit both single transaction bonds (STBs) and continuous bonds to be scanned and submitted to CBP as an email attachment or by fax.

- Liberalize the existing procedure, set forth in § 113.37(d), by which agents or attorneys acting for a corporate surety may identify themselves to CBP by permitting the submission of a surety-generated 9-digit alphanumeric identification number as a substitute for submission of a social security number.
- Remove the reference, in § 113.38(c)(4), to “port director” as among the CBP personnel authorized to determine whether CBP will accept the bonds of a particular surety.
- Effect a technical correction to § 113.52, which currently requires that CBP report a bonded debt to the Department of Justice for prosecution if unpaid for 90 days. As section 2103 of the Miscellaneous Trade and Technical Corrections Act of 2004 amended 19 U.S.C. 1514 by extending the time to file and amend a protest from 90 days to 180 days after the date of liquidation or reliquidation, or date of the decision, order, or finding being protested for entries made on or after December 18, 2004, the 90-day period should be changed to 180 days to reflect that fact.

Clarifying and conforming amendments

This document also amends the regulations to effect clarifications that better explain the bond process and conform the regulations to reflect amendments to title 19 of the CFR that went into effect after publication of the proposed rule. Specifically, these changes:

- Clarify in § 113.14, which pertains to situations where the approved form of a bond is inadequate, that in situations where CBP determines that none of the conditions contained in Subpart G, CBP Bond Conditions, of part 113 are

- applicable to a transaction sought to be secured, either the Director, Revenue Division, or the port director, may draft conditions that cover the transaction as CBP deems appropriate and the port director is not limited to drafting conditions only for single transaction bonds (STBs) in these instances. This change is necessary to reflect the fact that there are certain continuous bonds for which the port director, and not the Revenue Division, will draft bond conditions that are specific to the issues and the geography of the port involved.
- Clarify in § 113.15, which prescribes the retention of approved bonds, that except for bonds containing the agreement to pay court costs (condemned goods) (see § 113.72), and as may otherwise be deemed appropriate by CBP, bonds that are approved by the port director will be retained at the port office and bonds that are approved at the Revenue Division (including bonds relating to repayment of erroneous drawback payments containing the conditions set forth in § 113.65) will be retained at the Revenue Division.
 - Clarify the introductory language in § 113.39(a) to state that reports to CBP Headquarters are to be sent to the attention of the Executive Director, Regulations and Rulings, Office of International Trade.
 - Clarify § 113.64(b)(1) and (2) to state, in positive terms, that the principal (carrier) must pay processing fees to CBP “within” the prescribed number of “calendar” days after the close of the calendar quarter in which they were due.
 - Clarify § 133.25(c), relating to the terms of the IPR sample bond, by adding in the second sentence the phrase “..., conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the

furnishing of the sample by CBP to the owner of the mark.” This language is added to eliminate confusion and make clear that the IPR sample bond is posted to protect the importer or owner of the sample.

Proposals not adopted

As noted above, this final rule adopts changes suggested by commenters in response to the proposed rulemaking, including recommendations to not proceed with certain proposed amendments. In this document, CBP has also determined not to adopt as final certain regulatory proposals that are the subject of other CBP rulemakings that are currently in formal inter-departmental review. In addition, CBP is not finalizing certain proposals in light of ongoing efforts concerning the development and deployment of eBonds in the ACE environment. In this regard, it is noted that CBP has announced a deployment schedule that will include electronic filing of STBs. This schedule is available for viewing at:

<http://www.cbp.gov/sites/default/files/documents/Product%20Backlog%20as%20of%2003-31-14.pdf>. As many of the regulatory changes offered in the proposed rule may not be consistent with the deployment of eBonds in the ACE, or have otherwise been overtaken by events, the following proposed changes are not being adopted as final, in whole or in part (notwithstanding non-substantive editorial changes that are retained in this document), as described below:

- Proposed changes to 19 CFR 113.11 relating to bond applications, with the exception that this section is amended to specify that both STBs and continuous bonds may be scanned and submitted to CBP as an email attachment or by fax, paper STBs may be filed at the Revenue Division or with the port director, and

continuous bonds must be filed with the Director, Revenue Division.

- Proposed changes to 19 CFR 113.12 regarding bond approval, with the exception that paragraphs (a) and (b) are respectively amended to state that STBs may be approved by either the Revenue Division or by the director of the port where filed, and continuous bonds will be approved by the Director, Revenue Division.
- Proposed changes to 19 CFR 113.13(c) which would remove the 30-day time period from date of notification within which a principal must remedy a bond deficiency. Upon further review, and in response to commenters' suggestions, CBP has decided to reinstate a prescribed time period within which a principal must remedy the bond insufficiency. CBP views a 30-day response period as too lengthy to adequately protect the revenue and ensure compliance with applicable law and regulations, and therefore this provision is amended to prescribe a 15-day period.
- Proposed changes to 19 CFR 113.21 relating to information required on the bond.
- Proposed changes to 19 CFR 113.22 relating to witnesses required on the bond.
- Proposed changes to 19 CFR 113.23 relating to changes made on the bond.
- Proposed changes to 19 CFR 113.24 relating to riders, with the exception that this section is amended to reflect that riders must be filed with the Revenue Division and may be scanned and submitted to CBP as an email attachment or by fax. In addition, this section clarifies that riders must be attached to their related bond if submitted in a paper format and sets forth a reference to the CBP website

containing a comprehensive listing of acceptable riders. In addition, this section sets forth a reference to the CBP website containing a comprehensive listing of acceptable riders.

- Proposed changes to 19 CFR 113.25 relating to seals on the bond.
- Proposed changes to 19 CFR 113.26 relating to riders, with the exception that this section is amended to allow the filing of riders up to sixty days prior to the effective date rather than thirty days.
- Proposed changes to 19 CFR 113.27 relating to termination of bonds, with the exception that this section is amended to reflect that termination notices must be sent to the Revenue Division.
- Proposed changes to 19 CFR 113.33 relating to bond execution requirements of corporations, with the exception that paragraph (c) is amended to include a reference to the Revenue Division.
- Proposed changes to 19 CFR 113.37 relating to signature and seal requirements of corporate sureties, with the exception that the outdated existing reference to the “Bureau of Government Financial Operations” is replaced with an updated reference to “Bureau of the Fiscal Service” to reflect current administrative and legal authorities. Also, as noted above, CBP is adopting as final the proposed amendments to paragraph (d) whereby agents or attorneys acting for a corporate surety may identify themselves to CBP by submitting a surety-generated 9-digit alphanumeric identification number as a substitute for submission of a social security number.

- Proposed changes to 19 CFR 113.39 to reflect a generalized reference to “authorized CBP officer” as to who may recommend the removal of a surety company from Treasury Department Circular 570, with the exception that this section is amended by adding references to the Revenue Division and also to replace the outdated existing reference to the “Bureau of Government Financial Operations” with an updated reference to “Bureau of the Fiscal Service”.
- Proposed changes to § 113.40, which provides for acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds, with the exception that this section is amended to provide that the Secretary of Homeland Security is among those who may authorize the enforcement of bond laws and regulations and the Director, Revenue Division, and not the Port Director, is authorized to accept cash deposits in lieu of sureties on bonds.
- Proposed changes to 19 CFR 113.62(a)(1)(i) to include a reference to the “periodic monthly statement” inasmuch as this type of payment is made pursuant to a test program that has not been provided by regulation.
- Proposed changes to the title of the bond set forth in Appendix A to Part 113 from “Airport Customs Security Area” to “Airport CBP Security Area” in that the term “CBP” is improperly restrictive in this context. Here, CBP uses “Customs” in the generic sense of the word rather than as a continued reference to the legacy component of CBP, the U.S. Customs Service, previously referred to throughout title 19 CFR as “Customs.” It is noted, however, that CBP adopts in this final rule the proposal to convert this bond from a term bond to a continuous bond.

- Proposed changes to Appendices A and D to part 113 which would remove the witness requirements.
- Proposed changes to 19 CFR 133.21(d) and 19 CFR 133.42(e), as the proposed amendments to these intellectual property rights sample bond provisions are the subject of existing rulemakings which are in formal inter-departmental review.

Discussion of Comments

Eight commenters responded to CBP's solicitation of public comment in the proposed rule. A description of the comments received, together with CBP's analyses, is set forth below.

Comment:

One commenter requested confirmation that the proposed substitution of the reference to the Department of the Treasury in 19 CFR 113.1, with a reference to the Department of Homeland Security (DHS), does not create a deficiency in authority for CBP to require bonds or other security.

CBP Response:

The proposed substitution does not create a deficiency in authority. First, in view of the authority transferred by the Homeland Security Act of 2002 and delegated by Treasury Department Order No. 100-16 (May 23, 2003), Appendix to part 0 of title 19 of the Code of Federal Regulations (19 CFR part 0), all of the Secretary of the Treasury's authority pursuant to 19 U.S.C. 1623(a) was transferred and/or delegated to the DHS Secretary who then appropriately delegated it to the Commissioner of CBP, who may re-delegate it further within CBP. Second, any authority outside the scope of 19 U.S.C.

1623(a) is encompassed within the dependent clause of the sentence which begins 19 CFR 113.1.

Comment:

Six commenters provided submissions regarding various aspects of the bond application process as set forth in proposed § 113.11. The bond application comments are summarized as follows:

- The level of continuous bond application detail specified in proposed § 113.11(c) is much greater than the amount of information currently collected in bond applications and constitutes a new “collection of information” pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This contradicts CBP’s statement in the proposed rule that “[T]here are no new collections of information proposed in this document.”
- The requirement to submit an application for a STB, as set forth in proposed § 113.11(a), should be removed. The commenters noted that STBs are rarely, if ever, accompanied by bond applications and the transaction that the bond secures serves to provide CBP with the necessary information.
- In the alternative, if CBP elects to retain applications for STBs, as is required in proposed § 113.11(a), CBP should modify the provision to state that STB applications may be filed at either the Revenue Division or the port, and either of those locales may review and approve the bond.
- Requiring applications for any type of customs bonds is an outmoded concept as the preponderance of bond sufficiency decisions rendered by the Revenue Division are not based on the application, but on the Revenue Division’s analysis

of data that is readily and routinely extracted from CBP's own data systems. In this regard, it is noted that CBP's data processing and analysis capabilities are vastly more comprehensive today than those that were in existence in 1985 when the current bond application regulatory requirements were promulgated. CBP should handle its request for more specific information collection through utilization of CBP Directives.

- The detail set forth in the proposed bond application involves certain information which is pertinent only in the case of Activity Code 1 continuous bonds, even though the requirements of proposed § 113.11(c) purport to apply to all activity codes.
- Proposed § 113.11(d) requires updates to application information in the event of a “material change.” Commenters note CBP has not enforced this provision for 25 years. In addition, the term “material change” is undefined and therefore subjective, vague, and difficult to enforce. CBP has the ability to determine for itself whether any information has changed materially enough to warrant a new bond and, as the bond obligee, it is good risk management practice to continually review all bonds for adequacy.
- References in § 113.11 to CBP Form 301 should be deleted inasmuch as certain bonds filed with CBP (e.g., Importer Security Filing (ISF) “Appendix D” Bonds, Airport Customs Security Area “Appendix A” Bonds) are not filed on the CBP Form 301.
- Proposed § 113.11(c)(1)(v) requires that the bond applicant provide information relating to the nature of the relationship between principal, co-principals, or

- unincorporated divisions or trade names appearing on the bond. This new requirement does not have any relation to protection of revenue and/or setting bond amounts.
- Proposed § 113.11(c)(1)(viii) requires the applicant to report “anticipated” material changes to the nature of the merchandise that will be imported over the subsequent 12 months. This new requirement does not have any relation to protection of revenue.
 - Proposed § 113.11(c)(1)(xii) and (xiii) duplicate the information requested in paragraph (e).
 - It is not necessary that a bond application be executed under seal and this requirement should be removed from proposed § 113.11(e)(1). By waiving this requirement, proposed paragraphs (e)(1) and (e)(2) can be combined and require the same certification language for everyone and every situation.
 - As proposed, § 113.11 pertains to bond applications, paragraph (e)(1) should be amended by adding the word “applications” to clarify that the provision pertains to paper bond applications.
 - The last sentence in the certification language set forth in proposed § 113.11(e)(2) presumes that every bond application submitted electronically will be submitted by a corporate applicant. Non-corporate applicants will not be able to make such a certification.
 - The term “continuous transaction bond” in proposed § 113.11(c)(1) should read “continuous bonds.”

- In the proposed rule, CBP would permit certain documentation to be submitted to the Revenue Division in a non-paper format. As such submissions will not contain a written signature or seal, CBP proposes to add alternative certification language stating that the bonds are legally binding “to the same extent as if signed and under seal.” CBP should not permit certification in lieu of requiring a signature on non-paper bonds without developing appropriate safeguards to verify and authenticate the intent of the parties to be bound without the evidence of signatures. Part 113 should be limited to bonds submitted by mail, fax or other electronic imagery where the signature and seal will be visible (i.e., as a .pdf or .tif email attachment). CBP should engage the surety industry and trade in discussions to establish the proper regulatory language. Self-certification of one’s own authority is susceptible to fraud. In a related submission, another commenter noted that if an electronic bond transmission to CBP is not pursuant to an “authorized electronic interchange system,” as required by 19 U.S.C. 1623(e), a signature is required. To remedy these problems, the commenters suggest amending proposed § 113.11 by: (1) deleting the introductory paragraph and all references to CBP Form 301; (2) deleting the requirement to submit a bond application for STBs set forth in proposed paragraph (a); (3) removing the specific bond information set forth in proposed paragraph (c); (4) deleting the requirement to submit bond application updates in the event of material change; (5) stating that CBP may require a prospective or existing continuous or term bond principal to file a written bond application and, when required, the application must include the information specified by the Revenue Division in

order to properly evaluate bond sufficiency; (6) changing the reference to “paper bond” in proposed § 113.11(e)(1) to read, “paper bond application”, and; (7) adding the words, “where applicable” to the certification language in § 113.11(e)(2) to reflect that not all non-paper bond applications will be from corporate applicants. The commenters maintain that such amendments to the bond application procedures will result in true paperwork reduction without sacrificing CBP’s ability to obtain and review the information it needs to make sound bond sufficiency decisions.

CBP Response:

For reasons discussed elsewhere in this preamble, CBP has determined not to proceed with most of the proposed changes to 19 CFR 113.11. It is noted, however, that this final rule amends the CBP regulations to reflect the proposal to set forth CBP’s bond application procedures in § 113.11 (which are currently prescribed in § 113.12) and to set forth the bond approval regulations in § 113.12 (which are currently prescribed in § 113.11) as this non-substantive change reflects the proper chronological order of bond processing events. It is further noted that CBP is amending the STB bond application process set forth in § 113.11(a) to provide that the STB bond application may be in the form of a letter and filed with the Director, Revenue Division or the port director, or the STB may be scanned and submitted to CBP as an email attachment or by fax. Similarly, CBP is amending § 113.11(b) to provide that continuous bonds must be submitted to the Director, Revenue Division and may be scanned and submitted to CBP as an email attachment or by fax. Lastly, this final rule removes references to CBP Form 301 in § 113.11.

Comment:

Several commenters noted that a reference to term bonds should be added to proposed § 113.11 to encompass Airport Customs Security Area Bonds or, in the alternative, term bonds should be converted into a continuous bond format.

CBP Response:

CBP agrees with the commenters' suggestion that Airport Customs Security Area Bonds, which are currently term bonds that lapse at the end of a specified period, should be converted to a continuous bond type. This change will allow CBP to avoid lapses in coverage and thereby enhance security. The conversion poses no economic burden on the public and is a logical outgrowth of the proposed rulemaking in that it serves to ensure a uniform approach to bond approval, maintenance, and periodic review. Accordingly, this document amends Appendix A to 19 CFR part 113 by removing the bond text pertaining to specific duration of the bond and to locality.

Comment:

Several commenters provided submissions regarding various aspects of the bond approval process as set forth in proposed § 113.12. The bond approval comments are summarized as follows:

- Paragraph (a) should reflect that the Revenue Division already accepts emailed STB versions of the ISF Bond (Appendix D to part 113).
- The last sentence of proposed § 113.12(b) should be changed to state that “only one continuous bond for a particular activity ‘code’ will be authorized for each principal.” This is necessary because the unqualified reference to “a particular activity,” as is currently proposed, is too broad and susceptible to an unintended

interpretation that would require a principal to obtain more continuous bonds than are needed to cover all of its activities.

CBP Response:

CBP agrees that additional clarification as to who may approve bonds is beneficial. Accordingly, this document amends § 113.12(a) to state that STBs may be approved by the Revenue Division or by the director of the port where the STB is filed, and amends § 113.12(b) to state that continuous bonds must be approved by the Revenue Division. As CBP has determined not to proceed with the remainder of the proposed amendments to § 113.12, it is not necessary to address other comments concerning this section.

Comment:

Several commenters noted that CBP has apparently launched a new electronic single transaction bond program (“e-STB”). The program appears to be unauthorized and violative of the NPRM which repeatedly indicates that STBs will continue to be filed and approved by port directors. The final rule should authorize, but not require, the centralization of e-STBs at the Revenue Division.

CBP Response:

This comment predates deployment of the eBond test on January 3, 2015, and prior to this date CBP had not launched a formal e-STB program; rather, based on individual program requirements, such as Importer Security Filing (ISF) and Automated Commercial Environment (ACE) entries, CBP has accepted and processed scanned images of bonds transmitted via email. Nevertheless, as noted above, CBP is in agreement with the commenters’ suggestion to liberalize the manner by which STBs may

be submitted to CBP. To that end, this final rule amends the CBP regulations to permit STBs to be scanned and submitted to CBP as an email attachment or by fax. For purposes of uniformity, this document also amends § 113.11(b) to clarify that continuous bonds may be scanned and submitted to CBP as an email attachment or by fax.

Comment:

Several commenters provided comments regarding the proposed amendments to § 113.13(c), which pertain to CBP's periodic review to determine bond sufficiency. The comments are summarized as follows:

- Six commenters objected to the proposed amendments to § 113.13(c) which state that CBP will periodically review each bond on file to determine whether the bond is adequate to protect the revenue and ensure compliance with applicable law and regulations, and that, if CBP determines a bond to be inadequate, the principal will be promptly notified in writing and additional security for any and all of the principal's transactions covered by the bond may be required until the deficiency is remedied. The commenters state that the proposed changes would permit CBP to deactivate a bond and/or require additional collateralization almost immediately, regardless of the reason for the insufficiency. Although 19 CFR 113.13(c), as it is currently proposed to be amended, suggests that a bond insufficiency is determined by whether "the bond is adequate to protect the revenue and ensure compliance with the law and regulations," the commenters note that CBP finds insufficiency and deactivates bonds for a variety of reasons, not all of them involving threats to compliance or the revenue. The commenters

request that CBP maintain the 30 days written notice to the principal as is currently provided in the regulations.

- Several commenters object to CBP’s ability to render a bond insufficient in situations where a bond has been identified as “inadequate,” but the inadequacy is not significant enough to rise to the level of jeopardizing compliance or revenue.
- One commenter suggests replacing the word “immediate” in paragraph (d), with a word connoting a more reasonable period of time.
- The bond is an agreement between the principal, CBP, and the surety, and any notice given by CBP to the principal should also be given to the surety.
- Several commenters suggest the language in proposed paragraphs (c) and (d) pertaining to “additional securities” is duplicative and need only be stated once in paragraph (d).

CBP Response:

When circumstances require, CBP must be able to act quickly to protect the revenue and ensure compliance with law and regulation. There have been situations where the passage of time between CBP’s decision finding a bond to be insufficient and the principal increasing the bond in response to such a finding has resulted in the agency having to write off millions of dollars in uncollectible revenue. It is noted that even in situations where the continuous bond is rendered insufficient “immediately,” the trade retains the ability to move cargo without excessive delay by using STBs. In an effort to alleviate concern that CBP will improperly render a bond insufficient in situations where the bond inadequacy is not significant enough to rise to the level of jeopardizing compliance or revenue, CBP will reinstate a prescribed time period within which a

principal is given the opportunity to remedy the bond insufficiency. As noted above in this document, CBP views the existing 30-day response period as too lengthy to adequately protect the revenue and ensure compliance with applicable law and regulations; therefore, § 113.13(c) is amended to prescribe a 15-day period within which a principal must remedy a deficiency and to state that where CBP has determined that a bond is insufficient to adequately protect the revenue and ensure compliance with applicable law and regulations, CBP may provide written notice to the principal and surety that additional security in the form of cash deposit or STB may be required for any and all of the principal's transactions until the deficiency is remedied. CBP will provide notice of any insufficiency to both the principal and the surety.

Comment:

Several commenters expressed concern with the ISF implications of CBP's proposed amendments to § 113.13 which would allow CBP to deactivate a bond and/or require additional collateralization almost immediately. Before introduction of the ISF requirement, this action would cause delays in filing an entry for release as the cargo arrives at terminals in the U.S. Under ISF, the immediate inactivation of a bond for any insufficiency takes on troubling implications in that cargo will be held back from being sent to the U.S. by the carrier overseas. If the cargo is not laden aboard the vessel at the foreign port, it may cause significant shipping delays.

CBP response:

CBP disagrees and notes that even in situations where the continuous bond is rendered insufficient "immediately," the trade retains the ability to move cargo without excessive delay by using STBs. This includes using a STB to satisfy the ISF bonding requirement.

Comment:

Seven commenters disagree that CBP is “entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.” This language, or substantially similar variations thereof, was proposed to be added to various provisions throughout part 113. The commenters state that, as CBP is the obligee of the bond and a party to it, CBP has a duty to exercise due diligence to ensure that the bond meets the regulations and requirements CBP establishes. The explicit elimination of CBP’s accountability indicates a radical, unnecessary and inappropriate change in CBP’s approach to the bond process and protection of the revenue and such change was not adequately discussed in the proposed rule’s preamble. It was also suggested that, as a matter of law, it is inconceivable that the courts would allow CBP to collect against sureties on bonds which were produced fraudulently, or are deficient on their face, or are inconsistent with CBP regulations and statutory requirements. One commenter noted that the presumption of validity, authority and accuracy may attach to the filer, but not to the surety unless the filer’s authority is specifically verified. If a bond is submitted and accepted by CBP, then CBP must also take responsibility for the problems, errors or deficiencies in the bond which it has accepted.

CBP Response:

As CBP has determined not to proceed with the proposed regulatory provisions containing this language, it is not necessary to address these comments.

Comment:

One commenter suggests that the requirement to “line out” unused portions of the CBP Form 301 should be retained in § 113.21 as it helps reduce ambiguity or uncertainty as to the intent of the principal or the surety when completing the bond.

CBP response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.21, it is not necessary to address this comment.

Comment:

One commenter agrees with CBP’s proposal to remove § 113.22, which pertains to bond witness requirements, and suggests that all references to witnesses should be removed from §§ 113.24(d), 113.40(b), and Appendices A, B, C, and D to part 113.

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.22, it is not necessary to address this comment.

Comment:

Four comments were received regarding § 113.23, which describes the types of changes that may be made to a bond and the process by which to effect such changes.

The comments are summarized below:

- This section should be amended to read that changes may be made to the bond “filing” and not the actual bond because the bond has not been approved yet.
- One commenter suggests that the last sentence in § 113.23(c) be amended to read, “[W]hen a modification or interlineation is desired, the principal or surety

will withdraw the bond filing if submitted to CBP and a new bond will be executed.”

CBP response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.23, it is not necessary to address these comments.

Comment:

Four commenters made submissions regarding the proposed amendments to riders in § 113.24. The comments are summarized as follows:

- Any future riders should be able to be submitted to the Revenue Division.
- Proposed § 113.24(e) requires that all riders submitted on paper be signed by both the principal and co-principals. This requirement deviates from the existing requirement to have a rider signed by only the affected principal and, as such, is overly burdensome and unnecessary. In the alternative, if this revision is retained in the final, the requirement should also apply to each surety and co-surety. Section 113.24(e) does not provide the format for all acceptable riders, and the final rule should either list all acceptable riders or refer the reader to the CBP website for a complete listing.
- As § 113.26 states that the riders in §§ 113.24(e)(2) and (3) are effective on the “date in the rider,” CBP needs to include an effective date in these riders.
- CBP should remove the requirement that the rider must be executed under seal inasmuch as the only approved riders are those intended to correct information that does not rise to the level of materially altering the bond itself (i.e., address change, name change, etc.).

- One commenter noted that the riders named in proposed § 113.24, which are to be filed at the Revenue Division, are for a change to the principal's name or address, as well as addition and deletion riders for unincorporated divisions on a bond. The commenter suggests that reconciliation riders, which are currently filed at CBP Headquarters, should also be filed at the Revenue Division to avoid situations where a bond is terminated, but the rider is not. If a new bond is filed with a new surety, the rider is deemed unavailable as it indicates the surety on the terminated bond. Any entry flagged for reconciliation under the new bond is not valid because there is no reconciliation rider for the new bond. This is a CBP system issue and it would be advisable for the Revenue Division to control the filing and termination of reconciliation riders.

CBP Response:

CBP is not proceeding with the finalization of most of the proposed amendments to § 113.24. One exception is the amendment that provides that riders must be filed with the Revenue Division and that they may be scanned and filed as an email attachment or by fax. Other exceptions are the amendment of paragraph (c) to clarify that riders must be attached to their related bond if submitted in a paper format and the amendment of § 113.24 to include a reference to the CBP website containing a listing of all acceptable riders. As CBP has determined not to proceed with the remainder of the proposed changes to 19 CFR 113.24, it is not necessary to address the rest of the comments pertaining to this section. In response to the commenter's concern that there may be situations where a bond is terminated but the rider is not, CBP wishes to clarify that termination of the bond also terminates any and all riders to the bond.

Comment:

Five commenters noted the following regarding the seal requirements set forth in proposed § 113.25.

- CBP should add language to this provision stating that seal requirements apply only to bonds directly executed by principals (e.g., corporate officers), and that bonds executed by a duly empowered attorney-in-fact acting for the principal are exempt from seal requirements.
- As bonds are produced in a variety of ways, the regulations should specify whether the requirements imposed on the party executing the bond apply to the principal, surety or both.
- Paragraph (a), which requires that the party executing a bond submitted electronically to CBP “must retain a copy of the paper seal and make such seal available to CBP for inspection upon request,” should be amended to apply to the party “filing” the electronic bond inasmuch as this more accurately reflects the typical business practice and makes a necessary distinction.
- CBP should specify whether the requirement to retain a copy of the paper bond, and provide it to CBP upon request, is imposed upon the principal, the surety, or both.

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.25, it is not necessary to address these comments.

Comment:

Several commenters made recommendations pertaining to the effective dates of bonds and bond riders set forth in § 113.26. The comments follow:

- One commenter requested that CBP clarify, in paragraph (e), that the applicable time frame is 15 business days.
- CBP should make the rule more flexible with respect to the effective date of riders that are filed to correct an initial rejection.

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.26, with the exception that this document amends this section to allow the filing of riders up to 60 days prior to their effective dates, it is not necessary to address these comments.

Comment:

Several commenters submitted the following comments regarding bond termination procedures set forth in § 113.27:

- Proposed § 113.27 should be amended to provide CBP with the discretion to permit a withdrawal of a termination if it would be in the interest of CBP, the principal, and the surety.
- A commenter expressed dissatisfaction with the proposed amendments to § 113.27(b) which eliminate the current authority for sureties to terminate a bond in less than 30 days upon a showing “that a lesser time is reasonable under the circumstances,” and recommends that the authority be reinstated.

- The trade supports the proposed procedures set forth in paragraph (c) which avoid gaps in bond coverage.
- One commenter noted that pursuant to § 113.27(c)(1), a new bond must be filed after termination has taken effect and the bond must contain the conditions in Subpart G, regardless of whether the new bond is on CBP Form 301 or some other form in the regulations. As the conditions in Subpart G are only found on the CBP Form 301 and not on the other forms, the regulation should be amended accordingly.
- One commenter stated that the proposed language in § 113.27(c)(2) permits a termination to be conditioned on the approval of a new bond intended to replace the one being terminated. The commenter supports the concept, but not the way it is expressed (“...terminated pursuant to this section...”) as this could circumvent a surety’s decision to terminate a bond when that surety does not desire any delay or extension as to when termination becomes effective. A surety does not need a principal’s consent to terminate the bond, so the principal should not be able to delay that decision once the surety has given notice of termination under § 113.27(b). Further, this language should apply only when the principal has given notice of termination under § 113.27(a), and it should be moved there with some minor changes. A surety does not have a need to avail itself of the method outlined in proposed § 113.27(c)(2).

- Several commenters recommended removing the reference to “sureties” in § 113.27(c)(2) as this provision pertains to actions initiated by principals (usually importers), and by moving the regulatory text set forth in paragraph (c)(2) to paragraph (a). This restructuring will clarify that proposed paragraph (c)(2) does not apply to § 113.27(b).

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.27, with the exception that termination notices must be filed at the Revenue Division and they may be submitted to CBP via email or by fax, it is not necessary to address these comments.

Comment:

Several comments were submitted regarding corporations and Limited Liability Corporations (LLC) in § 113.33:

- One commenter suggested that CBP should amend proposed § 113.33 to include a definition of “corporation.”
- One commenter noted that proposed § 113.33(b) states that where the continuous bond of a corporate principal or LLC principal is submitted to CBP in an electronic format, the bond must contain the certification language set forth in § 113.11(e)(2). The commenter continued to note that the CBP Form 301 is subject to OMB approval and, as this certification is not required under the existing regulations, the addition of any language must be approved by OMB. The commenter also expresses concern that there is no physical room on the CBP Form 301 to place this certification.

CBP Response:

As CBP has determined not to proceed with most of the proposed changes to 19 CFR 113.33, with the exception that § 133.33(c) is amended to add a reference to the Revenue Division, it is not necessary to address these comments.

Comment:

One commenter stated that the use of individual sureties is outmoded and therefore § 113.35 should be removed from title 19 of the CFR. However, another commenter suggested that this section should be revised to set forth the specific types of property that can be posted by individual sureties (e.g., such assets should be liquid and be able to be readily valued).

CBP Response:

Although this provision is not commonly used, CBP opts to retain it and does not deem further specification as to the types of property that may be posted by individual sureties as necessary.

Comment:

One commenter noted that CBP should amend § 113.37(d) to remove the requirement that an agent or attorney on the bond must provide his or her social security number (SSN), as this requirement is counter to the protections afforded by the Privacy Act of 1974 (5 U.S.C. 552a). The commenter noted that CBP no longer uses the importer number (i.e., Employee Identification Number, whether CBP-assigned or SSN) of the bond principal on the CBP Form 5955a. Additionally, the commenter noted that the Department of Commerce's Bureau of Census abolished the use of SSNs in its

Automated Export System, citing 5 U.S.C. 552a, and suggested that CBP allow a surety attorney-in-fact to obtain and use a CBP-assigned importer number.

CBP Response:

In this final rule CBP is not adopting most of the proposed changes to § 113.37, with the following exceptions:

- Sections 113.37(d) and (g)(ii) are amended to allow an agent or attorney to place either his/her social security number or a surety-generated 9-digit alphanumeric identification number on the bond.
- Sections 113.37(a) and (f) are amended by removing the outdated reference to “Bureau of Government Financial Operations” and replacing it with a reference to “Bureau of the Fiscal Service” in order to conform to current administrative and legal authorities.
- Section 113.37(g)(1) is amended to allow corporate surety powers of attorney to be scanned and submitted to CBP as an email attachment, or by fax or mail.

Comment:

Two commenters suggested that CBP should amend proposed § 113.37(g) to reflect that the ACE permits a surety to manage its powers of attorney without the need to prepare and submit CBP Form 5297 on paper to CBP. Another commenter stated that CBP should authorize the electronic filing of CBP Form 5297.

CBP Response:

As noted above, CBP is amending § 113.37(g) to allow for the corporate surety powers of attorney to be scanned and submitted to CBP as an email attachment, or by fax or by mail.

Comment:

One commenter recommended that a change is needed to the language set forth in proposed § 113.38, which pertains to delinquent sureties, in order to harmonize the provision with the goal of bond centralization. Specifically, paragraph (c)(4) proposes to include a port director, along with the Commissioner of CBP and the Director, Revenue Division, as a person with the authority to determine that CBP will no longer accept the bonds of a particular surety. The commenter notes that this is troubling because the opinion of an individual port director may set policy based upon his or her criteria, instead of upon criteria developed and administered centrally. Further, such language is inconsistent with current § 113.38(c)(1) and (2) which distinguish between decisions as to non-acceptance of bonds by a port director and decisions as to non-acceptance of bonds by the Commissioner which are issued to port directors. It is also inconsistent with proposed § 113.39(a) which states that the role of any authorized CBP officer in determinations relating to the removal of a surety from Treasury Department Circular 570 status is that of fact gathering and reporting, with the ultimate determination as to whether to refer a matter to Treasury to be made by CBP Headquarters.

CBP Response:

We agree with the commenter. CBP will revert back to the existing language in § 113.38(c)(4) which states that “an appropriate CBP officer” will make these decisions. This final rule also amends § 113.38(c)(4) to no longer require that notice to the surety be provided in person or by certified mail.

Comment:

One commenter requested that CBP extend the effective date of the final rule to 180 days from date of publication in the **Federal Register**.

CBP Response:

CBP does not view an extension beyond the stated effective date to be necessary as the amendments to part 113 promulgated in this document do not require the trade to adopt different procedures.

Comment:

Several commenters noted that the substantive changes proposed in the notice were never the subject of a pre-publication dialogue with the trade, despite the fact that CBP meets regularly with the trade.

CBP Response:

CBP engaged in pre-publication dialogue of these issues with the trade on numerous occasions during the development of this rulemaking. CBP believes that the agency met its trade outreach obligations regarding the content and development of these regulations.

Comment:

Several commenters noted that the proposed changes to § 113.39 would allow an “authorized CBP officer” to initiate a procedure to remove a surety from Treasury Department Circular 570. The commenters note that this is an extremely serious action as the Treasury Department Circular 570 is the basis for the surety to secure all types of federal government obligations, not merely customs obligations. Accordingly, it is recommended that CBP delegate the authority to initiate this action to the Commissioner

of CBP or the Director, Revenue Division (the same individuals authorized to refuse to accept bonds of significantly delinquent sureties).

CBP Response:

CBP shares the commenters' concern, and this document does not adopt the proposed amendments to 19 CFR 113.39 which would have had the effect of replacing the existing references to "port director or Fines, Penalties, and Forfeitures Officer" with a more generalized reference to "CBP." However, in order to reflect the centralization of the continuous bond program at the Revenue Division, this provision is amended to include "authorized Revenue Division personnel," in addition to port directors and Fine, Penalties and Forfeitures Officers, as among those who may recommend that a surety company be removed from Treasury Department Circular 570.

Comment:

Section 113.40 prescribes the terms by which cash deposits or other types of U.S. obligations may be accepted by CBP in lieu of sureties on bonds. Paragraph (a) of this section requires that the party execute CBP Form 301 with the appropriate activity designated. A commenter noted that, as CBP bonds exist in formats other than the CBP Form 301, this paragraph should be amended to reflect that fact. A commenter also inquired whether the proposed amendments to § 113.40 authorize port directors to accept cash deposits or other obligations to secure single transactions.

CBP Response:

As a completed CBP Form 301 is not required for every type of cash-in-lieu of surety bond, § 113.40 is amended accordingly. This document also reverts to the original procedure set forth in paragraph (a) which provides that a port director retains the

authority to accept cash deposits or obligations of the United States in lieu of sureties on STBs.

Comment:

One commenter recommended that CBP make a technical change to current § 113.52, which requires that CBP report a bonded debt to the Department of Justice for prosecution if unpaid for 90 days. The commenter notes that as a party has 180 days to submit a protest to CBP, the 90-day period should be changed to 180 days to reflect that fact.

CBP Response:

CBP agrees. Section 2103 of the Miscellaneous Trade and Technical Corrections Act of 2004 amended 19 U.S.C. 1514 by extending the time to file and amend a protest from 90 days to 180 days after the date of liquidation or reliquidation, or date of the decision, order, or finding being protested for entries made on or after December 18, 2004. This document makes a technical correction to 19 CFR 113.52 to reflect the statutory amendment.

Comment:

One commenter requested that CBP clarify what is meant by the term “paper bond” as used in proposed §§ 113.11 and 113.25(a). Until CBP adopts the paperless eBond concept, every bond is a paper bond and every bond application is a paper bond application. It appears the defining element as to which rules for signatures and certification apply is to be determined by the means of delivery to CBP, and CBP should be more precise in its language. CBP should define the term “electronic bond” as that term is used in § 113.25(b) to mean a paper bond that is transmitted electronically.

CBP Response:

As discussed above, CBP has further clarified the text of §§ 113.11, and of other provisions within part 113 as appropriate, to reflect that bonds and related documents may be scanned and submitted to CBP as an email attachment or by fax. Scanned or faxed documents will contain the requisite signatures and certifications.

CONCLUSION

After review of the comments and further consideration, CBP has decided to adopt as final, with the changes discussed above in the preamble and with additional non-substantive editorial changes, the proposed rule published in the **Federal Register** (75 FR 266) on January 5, 2010.

EXECUTIVE ORDERS 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

REGULATORY FLEXIBILITY ACT

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The entities affected by this rule are importers and various other parties who file bonds with CBP as required by the CBP regulations. “Importers” are not defined as a “major industry” by the Small Business Administration (SBA) and do not have a unique North American Industry Classification System (NAICS) code; rather, virtually all industries classified by SBA include entities that import goods and services into the United States. Thus, entities affected by this rule would likely consist of a broad range of large, medium, and small businesses operating under the customs laws and other laws that CBP administers and enforces. These entities include, but are not limited to, importers, brokers, and freight forwarders, as well as other businesses that conduct various activities under continuous bonds.

The amendments set forth in this rule align the CBP regulations with current common practice and improve efficiency by requiring importers to file continuous bonds at the Revenue Division, requiring STBs to be filed at either the Revenue Division or with the port director, and permitting both continuous bonds and STBs to be scanned and submitted to CBP via email as an attachment or by fax.

Because these amendments affect such a wide-ranging group of entities involved in the importation of goods to the United States, the number of entities subject to this rule is considered “substantial.” It is not anticipated that there will be additional costs associated with filing continuous or single transaction bonds with the Revenue Division instead of the local port, and many importers already file these types of bonds directly with the Revenue Division. Additionally, these changes to the regulations confer a benefit to the entities as a result of increased efficiencies and harmonized standards in bond processing. The effects of these amendments, however, do not rise to the level of being considered a “significant” economic impact.

In the proposed rulemaking, CBP solicited comments on this conclusion. As we did not receive any comments contradicting our findings, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

The information collections contained in this rule have been previously submitted and approved by the Office of Management and Budget (OMB) and assigned OMB control numbers 1651-0050 and 1515-0144. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 101

Administrative practice and procedure, Customs duties and inspections, Organization and functions (Government agencies).

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 133

Bonds, Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures.

Amendments to the CBP Regulations

For the reasons stated above, parts 101, 113 and 133 of title 19 of the Code of Federal Regulations (19 CFR parts 101, 113 and 133) are amended as follows:

PART 101 – GENERAL PROVISIONS

1. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 101, et. seq.; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. Section 101.1 is amended by adding definitions for “CBP,” “Commissioner or Commissioner of Customs,” “Customs or U.S. Customs Service,” and “Customs regulations or CBP regulations” in alphabetical order to read as follows:

§ 101.1 Definitions.

* * * * *

CBP. The term “CBP” means U.S. Customs and Border Protection.

Commissioner or Commissioner of Customs. The terms “Commissioner” or “Commissioner of Customs” mean Commissioner of U.S. Customs and Border Protection.

Customs or U.S. Customs Service. The terms “Customs” or “U.S. Customs Service” mean U.S. Customs and Border Protection.

Customs regulations or CBP regulations. The terms “Customs regulations” or “CBP regulations” mean Chapter 1 of title 19 of the Code of Federal Regulations (19 CFR Chapter 1).

* * * * *

PART 113 -- CBP BONDS

3. The general authority citation for part 113 is revised to read as follows:

Authority: 6 U.S.C. 101, et. seq.; 19 U.S.C. 66, 1623, 1624.

* * * * *

4. The part 113 heading is revised to read as set forth above.

§ 113.0 [Amended]

5. Section 113.0 is amended by removing the word “Customs” and adding in its place the term “CBP”.

6. Section 113.1 is revised to read as follows:

§ 113.1 Authority to require security or execution of bond.

Where a bond or other security is not specifically required by law or regulation, the Commissioner of CBP may by specific instruction require, or authorize the Director, Revenue Division or 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 [Amended]

7. In § 113.2:

a. The heading is amended by removing the word “Customs” and adding in its place the term “CBP”;

b. The introductory text is amended by removing the word “Customs” and adding in its place the term “CBP”;

c. Paragraph (c) is amended by removing the word “shall” and adding in its place the word “will”, and by adding the word “as” before the word “he”; and

d. In paragraph (d), the first sentence is amended by removing the word “entry” and adding in its place the word “transaction”, the second sentence is amended by removing the word “shall” and adding in its place the word “will”, and the third sentence is amended by removing the word “Customs” and adding in its place the term “CBP”.

8. Section 113.4 is amended by revising paragraph (a) and amending paragraph (b) by removing the words “Customs laws or regulations” and adding in their place the words “customs laws or CBP regulations”.

The revision reads as follows:

§ 113.4 Bonds and carnets.

(a) Bonds. All bonds required to be given under the customs laws or CBP regulations will be known as CBP bonds.

* * * * *

9. Section 113.11 is revised to read as follows:

§ 113.11 Bond application.

(a) Single transaction 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 bond application. The single transaction bond application may be in the form of a letter filed with the Director, Revenue Division or the port director, or the application may be scanned and submitted to CBP as an email attachment or by fax. The application must 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. To secure multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a continuous bond application must be submitted to the Director, Revenue Division. The continuous bond application may be in the form of a letter or it may be scanned and submitted to CBP as an email attachment or by facsimile (fax).

(1) Information required. The application must 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), plus the estimated amount of any other tax or taxes on the merchandise to be collected by CBP, accruing on all merchandise imported by the principal during the calendar year preceding the date of the application. The total amount of duties and taxes will 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 must 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 Director, Revenue Division 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 must submit a new application containing an update of the information required by paragraph (b)(1) of this section. The new application must be filed no later than 30 days after the new facts become known to the principal.

(c) Certification. Any application submitted under this section must 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.

10. Section 113.12 is revised to read as follows:

§ 113.12 Bond approval.

(a) Single transaction bonds. Single transaction bonds will be approved by the Revenue Division or the director of the port where filed.

(b) Continuous bonds. Continuous bonds must be approved by the Revenue Division. Only one continuous bond for a particular activity will be authorized for each principal.

11. In § 113.13:

a. The first sentence in paragraph (a) is amended by removing the words “Customs bond shall” and adding in their place the words “CBP bond must”, and the second and third sentences in paragraph (a) are amended by removing the word “shall” each place that it appears and adding the word “will”;

b. Paragraph (b) introductory text is amended by removing the words “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” and adding in their place the words “CBP will”;

c. Paragraph (b)(2) is revised;

d. Paragraph (b)(4) is amended by removing the word “Customs” and adding in its place the term “CBP”;

e. Paragraph (c) is revised; and

f. Paragraph (d) is amended by removing the words “a port director or drawback office” and adding in their place the term “CBP”; by removing the word “Customs” and

adding in its place the words “all applicable”; and by removing the words “he shall” and adding in their place the words “CBP may immediately”.

The revisions read as follows:

§ 113.13 Amount of bond.

* * * * *

(b) * * *

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

* * * * *

(c) Periodic review of bond sufficiency. CBP will periodically review each bond on file to determine whether the bond is adequate to protect the revenue and ensure compliance with applicable law and regulations. If CBP determines that a bond is inadequate, the principal and surety will be promptly notified in writing. The principal will have 15 days from the date of notification to remedy the deficiency.

Notwithstanding the foregoing, where CBP determines that a bond is insufficient to adequately protect the revenue and ensure compliance with applicable law and regulations, CBP may provide written notice to the principal and surety that, upon receipt thereof, additional security in the form of cash deposit or single transaction bond may be required for any and all of the principal’s transactions until the deficiency is remedied.

* * * * *

12. Section 113.14 is revised to read as follows:

§ 113.14 Approved form of bond inadequate.

If CBP determines that none of the conditions contained in subpart G of this part is applicable to a transaction sought to be secured, the Director, Revenue Division, or the port director, as CBP deems appropriate, will draft conditions that cover the transaction. Before execution of the bond, the conditions must be submitted to Headquarters, Attention: Executive Director, Regulations and Rulings, Office of International Trade, for approval.

13. Section 113.15 is revised to read as follows:

§ 113.15 Retention of approved bonds.

Except for bonds containing an agreement to pay court costs (condemned goods) (see § 113.72), and except as may otherwise be deemed appropriate by CBP, bonds that are approved by the port director will be retained at the port office and bonds that are approved by the Revenue Division (including bonds relating to repayment of erroneous drawback payments containing the conditions set forth in § 113.65) will be retained at the Revenue Division. The bond containing the agreement to pay court costs (condemned goods), will be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608).

§ 113.21 [Amended]

14. In § 113.21:

a. Paragraphs (a)(1), (b), (c), and (e) are amended by removing the word “shall” each place that it appears and adding in its place the word “must”; and

b. Paragraph (d) is amended by removing the word “shall” and adding in its place the word “may”.

§ 113.22 [Amended]

15. Section 113.22 is amended in paragraphs (a) and (b) by removing the word “shall” each place it appears and adding in its place the word “must”.

§ 113.23 [Amended]

16. In § 113.23:

a. Paragraph (b) is amended by removing the word “shall” and adding in its place the word “must”;

b. Paragraph (c) is amended, in the first sentence, by removing the word “Customs” and adding in its place the term “CBP” and by removing the word “shall” and adding in its place the word “must” and, in the second sentence, by removing the word “shall” and adding in its place the word “may”; and

c. Paragraph (d) is amended: by removing the word “Customs” each place that it appears and adding in its place the term “CBP”; by removing, in the first sentence, the word “shall” and adding in its place the word “may”, and; in the second sentence, by removing the word “shall” and adding in its place the word “will”.

17. In § 113.24:

a. Paragraphs (a), (b) and (c) are revised; and

b. Paragraph (d) is amended by removing the word “shall” each place that it appears and adding in its place the word “must”, and by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

The revisions read as follows:

§ 113.24 Riders.

(a) Types of riders. The Revenue Division will accept all types of authorized bond riders. For a comprehensive listing, see the CBP website located at www.cbp.gov.

(b) Location and method of filing. A bond rider must be filed at the Revenue Division, and may be submitted in paper or scanned and submitted to the Revenue Division as an email attachment or by facsimile (fax).

(c) Attachment of rider to paper bond. A rider submitted to CBP in paper format must be securely attached to the related bond to prevent their loss or misplacement.

* * * * *

§ 113.25 [Amended]

18. Section 113.25 is amended by removing the word “shall” each place that it appears and adding in its place the word “must”.

19. In § 113.26:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by removing the words “the Customs Bond, Customs” and adding in their place the term “CBP”; and

c. Paragraph (c) is amended by removing the words “the Customs Bond, Customs” and adding in their place the term “CBP”.

The revision reads as follows:

§ 113.26 Effective dates of bonds and riders.

(a) General. A continuous bond, and any associated application required by § 113.11 or a rider, must be filed at least 60 days prior to the effective date requested for the continuous bond or rider.

* * * * *

20. Section 113.27 is revised to read as follows:

§ 113.27 Effective dates of termination of bond.

(a) Termination by principal/co-principal. A written request by a principal or co-principal to terminate a bond must be mailed, faxed, or emailed to the Revenue Division or, in the case of a bond relating to repayment of erroneous drawback payment, to the drawback office where the bond was approved. The termination will take effect on the date requested if that date is at least 10 business days after the date CBP receives the request. If no termination date is requested, the termination will take effect on the tenth business day following the date CBP receives the request.

(b) Termination by surety. A surety may not disavow already incurred obligations but may, with or without the consent of the principal, terminate its agreement to accept future obligations on a bond. The surety must provide reasonable notice of termination, made pursuant to the methods set forth in paragraph (a) of this section, to both the Revenue Division or a drawback office, as appropriate, and to the principal. The notice must state the date on which the termination will be effective. Thirty days will constitute reasonable notice unless the surety can show to the satisfaction of CBP that a shorter time frame is reasonable under the facts and circumstances.

(c) Effect of termination. If a bond is terminated, no new customs transactions may be charged against the bond. A new bond in an appropriate amount on CBP Form 301, containing the appropriate bond conditions set forth in subpart G of this part, must be filed before further customs activity may be transacted.

21. In § 113.32:

- a. Introductory text is added;
- b. Paragraph (a) is removed;
- c. Paragraph (b) is redesignated as paragraph (a) and is amended by removing the word “shall” and adding in its place the word “must”; and
- d. Paragraph (c) is redesignated as paragraph (b) and is amended, in the first sentence, by removing the word “shall” and adding in its place the word “will”, and by removing the second sentence.

The addition reads as follows:

§ 113.32 Partnerships as principals.

A partnership, including a limited partnership, means any business association recognized as such under the laws of the State where the association is organized.

* * * * *

22. Section 113.33 is amended:

- a. In paragraph (a), by removing the word “Customs” and adding in its place the term “CBP”;
- b. In paragraph (b), by removing the word “shall” each place that it appears and adding in its place the word “must”;
- c. By revising paragraph (c);

d. In paragraph (d), by removing the words “port director” and adding in their place the words “Revenue Division”, and removing the word “shall” each place that it appears and adding in its place the word “must”; and

e. In paragraph (e), removing the words “shall be” and adding in their place the word “are”.

The revision reads as follows:

§ 113.33 Corporations (including Limited Liability Corporations) as principals.

* * * * *

(c) Bond executed by an officer of corporation. When a bond is executed by an officer of a corporation, a power of attorney will not be required if the person signing the bond on behalf of the corporation is known to the Revenue Division, port director, or drawback office to be the president, vice president, treasurer, or secretary of the corporation. The officer's signature is prima facie evidence of that officer's authority to bind the corporation. When a power of attorney is required, it must conform to the requirements of subpart C, part 141, of this chapter.

* * * * *

§ 113.34 [Amended]

23. Section 113.34 is amended by removing the word “shall” in the second sentence and adding in its place the word “may”.

24. Section 113.35 is revised to read as follows:

§ 113.35 Individual sureties.

(a) Number required. If individuals sign as sureties, there must be two sureties

on the bond unless CBP is satisfied that one surety is sufficient to protect the revenue and ensure compliance with the law and regulations.

(b) Qualifications to act as surety—(1) Residency and citizenship. Each individual surety on a CBP bond must be both a resident and citizen of the United States.

(2) Granting of power of attorney. Any individual, unless prohibited by law, may grant a power of attorney to sign as surety on CBP bonds. Unless the power is unlimited, all persons to whom the power relates must be named.

(3) Property requirements. For both single transaction and continuous bonds, each individual surety must have property available as security within the customs territory of the United States. The current market value of the property, less any encumbrance, must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) Oath and evidence of solvency. Before being accepted as a surety, the individual must:

(1) Take an oath on CBP Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and location of one or more pieces of real estate owned within the customs territory of the United States, and the value thereof, less any encumbrance.

(2) Produce such evidence of solvency and financial responsibility as CBP may require.

(d) Determination of financial responsibility. An individual will not be accepted as surety on a bond until CBP is satisfied as to the financial responsibility of the individual. CBP may request Immigration and Customs Enforcement (ICE) to conduct an immediate investigation to verify a surety's financial responsibility.

(e) Continuancy of financial responsibility. In order to ascertain the continued solvency and financial responsibility of individual sureties, CBP will require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every six months, and more often if deemed advisable.

§ 113.36 [Amended]

25. Section 113.36 is amended by removing the word "shall" and adding in its place the word "will".

26. In § 113.37:

a. The second sentence in paragraph (a) is amended by removing the word "Customs" and adding in its place the term "CBP"; removing the word "shall" where it appears after the word "corporation" and adding in its place the word "will"; removing the words "shall be for a greater amount than" and adding in their place the words "may exceed", and; removing the phrase "Bureau of Government Financial Operations" and adding in its place the phrase, "Bureau of the Fiscal Service".

- b. Paragraph (b) is amended by removing the word “Customs” and adding in its place the term “CBP”;
- c. Paragraph (c) is amended by removing the word “shall” and adding in its place the word “must”;
- d. Paragraph (d) is revised;
- e. Paragraph (e) is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;
- f. Paragraph (f) is amended by removing the words “Bureau of Government Financial Operations” and adding in their place the words, “Bureau of the Fiscal Service”; removing the word “shall” and adding in its place the word “must”; removing, in the last paragraph of the “Corporate Sureties Agreement for Limitation of Liability” set forth under paragraph (f), the number “19__” and adding in its place “20__”; and removing in the signature block the words “Port Director (Drawback Office)” and adding in their place the words “Authorized CBP officer”;
- g. Paragraph (g)(1) introductory text and (g)(1)(ii) are revised;
- h. Paragraph (g)(2) is amended by removing the word “shall” each place that it appears and adding in its place the word “must” and by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;
- i. Paragraph (g)(3) is amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”; in the first, second and third sentences by removing the word “shall” each place that it appears and adding in its place the word “must”, and; in the fourth sentence, by removing the word “shall” and adding in its place the word “will”;

j. Paragraph (g)(4) is amended by removing the word “shall” each place that it appears and adding in its place the word “will” and by removing the word “Customs” and adding in its place the term “CBP”; and

k. Paragraph (g)(5) is revised.

The revisions read as follows:

§ 113.37 Corporate sureties.

* * * * *

(d) Social security or other surety-generated identification number of agent or attorney on the bond. In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney must place his/her social security number or other surety-generated 9-digit alphanumeric identification number, as it appears on the corporate surety power of attorney.

* * * * *

(g) * * *

(1) Execution and contents. Corporate surety powers of attorney may be submitted to CBP on the CBP Form 5297 and may be scanned and submitted as an email attachment, or submitted by facsimile (fax) or mail.

* * * * *

(ii) Name and address of agent or attorney, and social security number or other surety-generated 9-digit alphanumeric identification number for the agent or attorney.

* * * * *

(5) Change on the power of attorney. (i) No change may be made on the CBP Form 5297 after it has been approved by CBP except the following:

- (A) Grantee name change;
- (B) Grantee address change; and
- (C) The addition of port(s) to the corporate surety power of attorney on file.

(ii) To make any other change to the power of attorney two separate CBP Forms 5297 must be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

27. In §113.38:

a. The heading and text of paragraph (a) are amended by removing the word “Customs” each place it appears and adding the term “CBP” in its place; and the text of paragraph (a) is further amended by removing the word, “shall” and adding in its place the word, “will”;

b. The heading and text of paragraph (b) are amended by removing the word “Customs” each place it appears and adding the term “CBP” in its place;

c. Paragraph (c)(1) is amended in the heading and first sentence by adding the words “single transaction” before the word “bond” each place that it appears and, in the second sentence, by removing the language, “Director, Border Security and Trade Compliance Division” and adding in its place, “Executive Director, Regulations and Rulings, Office of International Trade,”;

d. Paragraph (c)(2) is revised;

e. Paragraph (c)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”; and

f. Paragraph (c)(4) is revised.

The revisions read as follows:

§ 113.38 Delinquent sureties.

* * * * *

(c) * * *

(2) Non-acceptance of bond upon instruction by Commissioner of CBP or Director, Revenue Division. The Commissioner of CBP, or the Director, Revenue Division, may issue instructions to CBP officers not to accept a bond secured by an individual or corporate surety who, without just cause, is significantly delinquent with respect to either the number or dollar amounts of outstanding bills.

* * * * *

(4) Review and final decision. After a review of any submission made by a surety under paragraph (c)(3) of this section, if an appropriate CBP officer is still of the opinion that bonds secured by the surety should not be accepted, written notice of the decision will be provided to the surety at least five days before the date that CBP will no longer accept the bonds of the surety. Copies of the notice will also be provided to the Executive Director, Regulations and Rulings, Office of International Trade and, if the notice does not originate from the Revenue Director, to the Director, Revenue Director. Notice will be given to the public by publishing the decision in the Customs Bulletin.

* * * * *

28. In § 113.39:

- a. The introductory text is revised;
- b. Paragraph (a) introductory text is revised;

c. Paragraph (a)(5) is amended by removing the words the “port director or Fines, Penalties, and Forfeitures Officer” and adding in their place the words “port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Director personnel”; and

d. Paragraph (b) is amended in the first sentence, by removing the words “The Director, Border Security and Trade Compliance Division, shall” and adding in their place the words “CBP Headquarters will”; in the second sentence, by removing the words “Bureau of Government Financial Operations” and adding in their place the words, “Bureau of the Fiscal Service”; and, in the last sentence, by removing the words “port director and Fines, Penalties, and Forfeitures Officer” and adding in their place the words “port director, Fines, Penalties, and Forfeitures Officer, and Director, Revenue Division”.

The revisions read as follows:

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division officer is dissatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company’s bond or otherwise has failed to honor an obligation on that bond, the port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division personnel may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) Report to Headquarters. A port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division officer will send the following evidence to CBP

Headquarters, Attention: Executive Director, Regulations and Rulings, Office of
International Trade:

* * * * *

29. In § 113.40:

a. Paragraph (a) is revised;

b. Paragraph (b) introductory text is revised and the “Power of Attorney and Agreement (For Corporation)” form is amended by removing the designation “19__” each place that it appears and adding “20__” in its place; and

c. Paragraph (c) is revised.

The revisions read as follows:

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) General provisions. In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury, the Secretary of Homeland Security, or the Commissioner of CBP are authorized to enforce, the Director, Revenue Division or, in the case of single transaction bonds, a port director, may accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the face amount of the bond that would be required. The option to deposit cash or U.S. obligations in lieu of sureties is at the option of the importer, and a CBP Form 301 or other CBP-approved bond designating the appropriate activity for the cash deposits or U.S. obligations in lieu of surety must be filed. When cash or obligations in lieu of surety are accepted, it must be for a term of no more than one year. Additional cash deposits or obligations in lieu of surety may be required.

(b) Authority to sell United States obligations on default. At the time of deposit with the Director, Revenue Division, of any U.S. obligation (other than U.S. money), the obligor must deliver a duly executed power of attorney and agreement authorizing the Director, Revenue Division, in the case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of the sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below and must be appropriately modified when the obligor is either an individual or a partnership:

* * * * *

(c) Application of United States money or obligations on default. If United States cash or obligations are deposited in lieu of surety on any bond, the appropriate CBP officer is authorized to apply the cash or money received from the deposited obligation to satisfy any damages, demand, or deficiency arising from a default under the bond.

§ 113.41 [Amended]

30. Section 113.41 is amended by removing the word “shall” and adding in its place the word “must”, and removing the word “Customs” and adding in its place the term “CBP”.

§ 113.42 [Amended]

31. Section 113.42 is amended by removing from the first sentence the word “shall” and adding in its place the word “must”; removing the word “Customs” and

adding in its place the term “CBP”; and removing in the second sentence the word “shall” and adding in its place the word “will”.

32. In § 113.43:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by removing the word “shall” each place that it appears and adding in its place the word “will” and removing the words “2 months” each place that they appear and adding in their place the words “60 days”; and

c. Paragraph (c) is amended by removing the word “shall” each place that it appears and adding in its place the word “will”.

The revision reads as follows:

§ 113.43 Extension of time period.

(a) Application received within time period. If a document referred to in § 113.42 is not produced within 120 days from the date of the transaction in connection with which the bond was given, the port director or an appropriate CBP officer, in his or her discretion, and upon written application of the importer, may extend the period for one further period not to exceed 60 days.

* * * * *

§ 113.44 [Amended]

33. In § 113.44, paragraph (b) is amended by removing the word “shall” and adding in its place the word “must”.

§ 113.45 [Amended]

34. Section 113.45 is amended by removing the word “shall” and adding in its

place the word “must” and removing the word “entry” each place that it appears and adding in its place the word “transaction”.

§ 113.51 [Amended]

35. Section 113.51 is amended by removing the word “Customs” and adding in its place the term “CBP”.

36. Section 113.52 is revised to read as follows:

§ 113.52 Failure to satisfy the bond.

If any CBP bond, except one given only for the production of free-entry or reduced-duty documents (see § 113.43(c) of this chapter) has not been satisfied upon the expiration of 180 days after liability has accrued under the bond, the matter will be reported to the Department of Justice for prosecution unless measures have been taken to file an application for relief or protest in accordance with the provisions of this chapter or to satisfactorily settle this matter.

§ 113.53 [Amended]

37. In § 113.53:

a. The section heading is amended by removing the word “Customs” and adding in its place the term “CBP”;

b. Paragraph (a) introductory text is amended by removing in the paragraph heading the word “Customs” and adding in its place the term “CBP” and removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

c. Paragraph (a)(3) is amended by adding after the word “Commissioner” the words “of CBP”; and

d. Paragraph (b) is amended by adding in the paragraph heading, after the word

“director”, the words “or other authorized CBP officer”; removing, in the text, the word “Customs” and adding in its place the term “CBP”; adding after the word “director” the words “or other authorized CBP officer”; and removing the word “shall” and adding in its place the word “will”.

§ 113.55 [Amended]

38. In § 113.55:

a. Paragraph (c) introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must” and removing the word “Customs” and adding in its place the word “customs”;

b. Paragraph (c)(1) is amended by removing the word “shall” and adding in its place the word “will”;

c. Paragraph (c)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”; and

d. Paragraph (d) is removed.

Subpart G—CBP Bond Conditions

39. The subpart G heading is revised to read as set forth above.

§ 113.61 [Amended]

40. Section 113.61 is amended in the first sentence by removing the word “Customs” and adding in its place the “customs” and in the second sentence by removing the word “Customs” and adding in its place the term “CBP”.

41. In § 113.62:

a. The introductory text is amended by removing the word “shall” and adding in its place the word “must” and by removing the words “single entry” and adding in their

place the words “single transaction”;

b. Paragraphs (a)(1) introductory text, (a)(1)(ii), and (a)(2) introductory text are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

c. Paragraph (a)(3) is amended by removing the words “the port director” and adding in their place the term “CBP”;

d. Paragraph (b) introductory text and paragraph (b)(1) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

e. Paragraph (c) is amended by removing the word “Customs” and adding in its place the term “CBP”;

f. Paragraph (d) introductory text is amended by removing the word “Customs” wherever it appears and adding in its place the term “CBP”;

g. Paragraph (f) introductory text and paragraph (f)(2) are amended by removing the word “Customs” wherever it appears and adding in its place the term “CBP”;

h. Paragraph (f)(3) is revised;

i. Paragraph (g)(1) is amended by removing the word “Customs” and adding in its place the term “CBP”;

j. Paragraph (h)(2) is revised;

k. Paragraphs (h)(3) and (4) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

l. The heading and text of paragraph (i) are amended by removing the words

“Customs Regulations” each place that they appear and adding in their place the words “CBP regulations”; and by removing the words “Customs security” each place that they appear and adding in their place the words “customs security”;

m. Paragraph (j) is amended by removing the words “Customs and Border Protection” and adding in their place the term “CBP”;

n. Paragraph (k)(2) is amended by removing the words “Customs and Border Protection (CBP)” and adding in their place the term “CBP”; and

o. Paragraphs (m)(2) and (4) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP” and removing the word “shall” each place that it appears and adding in its place the word “will”.

The revisions to § 113.62 read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(f) * * *

(3) Keep any customs seal or cording on the merchandise intact until the merchandise is examined by CBP.

* * * * *

(h) * * *

(2) If a fishing vessel, to present the original approved application to CBP within 24 hours on each arrival of the vessel in the customs territory of the United States from a fishing voyage;

* * * * *

§ 113.63 [Amended]

42. In § 113.63:
- a. The introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;
 - b. Paragraph (a)(2) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;
 - c. Paragraph (a)(3) is amended by adding the term “CBP” before the word “regulations” and removing the word “Customs” and adding in its place the term “CBP”;
 - d. Paragraph (a)(5) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP” and removing the word “Regulations” and adding in its place the word “regulations”;
 - e. Paragraph (b)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”;
 - f. Paragraph (b)(3) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;
 - g. Paragraphs (c)(1) and (2) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;
 - h. Paragraph (c)(3) is amended by removing the words “Customs Regulations” and adding in its place the words “CBP regulations”;
 - i. Paragraph (c)(4) is amended by removing the word “Customs” and adding in its place the term “CBP” and removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;
 - j. Paragraph (d) is amended by removing in the paragraph heading and text the word “Customs” each place that it appears and adding in their place the term “CBP”;

k. Paragraph (e) is amended by removing the words “Customs laws and regulations” and adding in their place the words “customs laws and CBP regulations”;

l. The heading and text of paragraph (f) are amended by removing the words “Customs Regulations” each place that they appear and adding in their place the words “CBP regulations” and by removing the words “Customs security” each place that they appear and adding in their place the words “customs security”;

m. Paragraph (g) is amended by removing the words “Customs and Border Protection” and adding in their place the term “CBP”;

n. Paragraph (h)(1) is amended by removing the word “Customs” and adding in its place the term “CBP”;

o. Paragraph (h)(2) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;

p. Paragraph (h)(5) is amended by removing the word “Customs” and adding in its place the term “CBP”;

q. Paragraph (i)(2) is amended by removing the word “shall” and adding in its place the word “will” and by removing the word “Customs” and adding in its place the term “CBP”; and

r. Paragraph (i)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”.

43. In § 113.64:

a. The introductory text is amended by removing the word “shall” and adding in its place the word “must” and by removing the word “entry” and adding in its

place the word “transaction”;

b. Paragraph (a) is amended by removing the words “Customs and Border Protection (CBP)” and adding in their place the term “CBP” and by removing the second sentence;

c. Paragraphs (b) through (k) are redesignated as paragraphs (c) through (l);

d. A new paragraph (b) is added;

e. Newly redesignated paragraph (c) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”; by removing the word “Regulations” each place it appears and adding in its place the word “regulations”, and; in the third sentence, by removing the word “shall” and adding in its place the word “will”;

f. The heading and text of newly redesignated (j) are amended by removing the words “Customs Regulations” each place they appear and adding in their place the words “CBP regulations”; and by removing the words “Customs security” each place that they appear and adding in their place the words “customs security”; and

g. Newly redesignated paragraphs (l)(1) and (2) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

The addition reads as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(b) Agreement to pay liquidated damages—(1) Passenger processing fees: If the principal (carrier) fails to pay passenger processing fees to CBP within 31 calendar days

after the close of the calendar quarter in which they were required to be collected pursuant to § 24.22(g) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the passenger processing fees that were required to be collected but not timely remitted to CBP, regardless of whether such fees were in fact collected from passengers, as prescribed by regulation.

(2) Railroad car processing fees: If the principal (carrier) fails to pay railroad car processing fees to CBP within 60 calendar days after the close of the calendar month in which they were collected pursuant to § 24.22(d) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the railroad car processing fees which have not been timely paid to CBP as prescribed by regulation.

(3) Reimbursement fees payable by express consignment carrier and centralized hub facilities. If the principal (carrier) fails to timely pay the reimbursement fees payable to CBP by express consignment carrier facilities and centralized carrier facilities pursuant to the terms set forth in § 24.23(b)(4) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the fees which have not been timely paid to CBP as prescribed by that section.

* * * * *

§ 113.65 [Amended]

44. In § 113.65:

a. The introductory text is amended by removing the word “shall” and adding in its place the word “must” and by removing the word “entry” and adding in its place the word “transaction”; and

b. Paragraphs (a)(3) and (4) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

45. In § 113.66:

a. The introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;

b. Paragraph (a) introductory text and paragraph (a)(1) are revised;

c. Paragraph (b)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”;

d. Paragraph (c)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”;

e. Paragraph (d)(2) is amended by removing the word “shall” and adding in its place the word “will” and by removing the word “Customs” and adding in its place the term “CBP”; and

f. Paragraph (d)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”.

The revisions read as follows:

§ 113.66 Control of containers and instruments of international traffic bond conditions.

(a) Agreement to Enter Any Diverted Instrument of International Traffic. If a principal brings in and takes out of the customs territory of the United States an instrument of international traffic without entry and without payment of duty, as provided by the CBP regulations and section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)) the principal agrees to:

(1) Report promptly to CBP when the instrument is diverted to point-to-point local traffic in the customs territory of the United States or when the instrument is otherwise withdrawn in the customs territory of the United States from its use as an instrument of international traffic.

* * * * *

§ 113.67 [Amended]

46. In § 113.67:

- a. Paragraph (a) introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;
- b. Paragraph (a)(1) introductory text is amended by removing the word “Customs” and adding in its place the term “CBP”;
- c. Paragraph (a)(1)(i) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;
- d. Paragraph (a)(1)(iii) is amended by removing the word “Customs” and adding in its place the term “CBP”;
- e. Paragraph (a)(2)(iii) is amended by removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” each place it appears and adding in its place the term “CBP”;
- f. Paragraph (b) introductory text is amended by removing the word “shall” each place it appears and adding in its place the word “must”;
- g. Paragraph (b)(1) introductory text is amended by removing the word “Customs” and adding in its place the term “CBP”;
- h. Paragraph (b)(1)(i) is amended by removing the words “Customs Regulations”

and adding in their place the words “CBP regulations”; and

i. Paragraphs (b)(1)(iii) and (b)(2)(iii) are amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”.

§ 113.68 [Amended]

47. In § 113.68:

a. The introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must”; and by removing the word “entry” and adding in its place the word “transaction”;

b. Paragraph (a) is amended by removing the word “Customs” and adding in its place the term “CBP”; and

c. The second sentence of paragraph (b) is amended by removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.69 [Amended]

48. In § 113.69:

a. The introductory text is amended by removing the word “shall” each place it appears and adding in its place the word “must” and by removing the word “entry” and adding in its place the word “transaction”; and

b. The introductory text of the “Production of Bill of Lading Bond Conditions” is amended by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.70 [Amended]

49. In § 113.70:

a. The introductory text is amended by removing the word “shall” each place it appears and adding in its place the word “must” and by removing the word “entry” and adding in its place the word “transaction”; and

b. The first sentence in the “Bond Condition to Indemnify United States for Detention of Copyrighted Material” is amended by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.71 [Amended]

50. In § 113.71, the introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must” and by removing the word “entry” and adding in its place the word “transaction”.

§ 113.72 [Amended]

51. In § 113.72, the introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must” and by removing the word “entry” and adding in its place the word “transaction”.

§ 113.73 [Amended]

52. In § 113.73:

a. The introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;

b. Paragraph (a)(1) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;

c. Paragraph (a)(2) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP” by removing the word “Regulations” and adding in its place the word “regulations” and by removing the word “shall” in the

third sentence and adding in its place the word “will”;

d. Paragraph (b) is amended by removing the word “shall” and adding in its place the word “will” and by removing the word “Customs” and adding in its place the term “CBP”;

e. Paragraph (c) is amended by removing the words “Customs and Border Protection (CBP)” and adding in their place the term “CBP”;

f. Paragraph (d)(2) is amended by removing the words “Customs officer” and adding in its place the words “CBP Officer”; and

g. Paragraph (e) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”.

§ 113.74 [Amended]

53. Section 113.74 is amended by removing the word “entry” and adding in its place the word “transaction”.

54. Appendix A to Part 113 is revised to read as follows:

Appendix A to Part 113 – Airport Customs Security Area Bond

AIRPORT CUSTOMS SECURITY AREA BOND

_____ (name of principal) of _____ (address)

and _____ (name of surety) of _____

(address) are held and firmly bound unto the United States of America in the sum of

_____ dollars (\$_____), for the payment of which we bind ourselves,

our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

WITNESS our hands and seals this _____ day of _____, 20__.

WHEREAS, the principal (including the principal’s employees, agents, and contractors) desires access to airport customs security areas;

Now, Therefore, the Condition of this Obligation is Such That –

The principal agrees to comply with the CBP regulations applicable to customs security areas at airports. If the principal defaults on the condition of this obligation, the principal and surety, jointly and severally, agree to pay liquidated damages of \$1,000 for each default; or such other amount as may be authorized by law or regulation. 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 annual period in the amount listed above for liabilities that accrue in each annual period.

Signed, Sealed, and Delivered in the Presence of—

Name
Address

Name
Address
Principal (SEAL)

Name
Address

Name
Address

Name
Address
Surety (SEAL)

Name
Address

Appendix B to Part 113 [Amended]

55. Appendix B to Part 113 is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

Appendix C to Part 113 [Amended]

56. Appendix C to Part 113 is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

PART 133 -- TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

57. The general and specific authority citations for part 133 continue to read as follows:

AUTHORITY: 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1624; 31 U.S.C. 9701;

* * * * *

Sections 133.21 through 133.25 also issued under 18 U.S.C. 1905; Sec. 818(g), Pub. L. 112-81.

* * * * *

58. In § 133.25, paragraph (c) is revised to read as follows:

§ 133.25 Procedure on detention of articles subject to restriction.

* * * * *

(c) Disclosure to the trademark or trade name owner. At any time following presentation of the merchandise for CBP's examination, but prior to seizure, CBP may release a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this paragraph, the owner of the mark must furnish to CBP a bond in the form and amount specified by CBP, conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the furnishing of the sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time.

The owner must return the sample to CBP upon demand or at the conclusion of the examination or testing, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner must, in lieu of returning the sample, certify to CBP that: "The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement."

* * * * *

R. Gil Kerlikowske
Commissioner

Approved: November 4, 2015

Timothy E. Skud
Deputy Assistant Secretary of the Treasury
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