

Commercial Customs Operations Advisory Committee (COAC) Government Issue Paper: Intelligent Enforcement Subcommittee/Bond Working Group

March 2021



U.S. Customs and
Border Protection



Trade Policy and Programs/Office of Trade
Intelligent Enforcement Subcommittee/Bond Working Group
March 2021

Action Required: Informational

Background:

Risk-Based Bonding Initiative

- U.S. Customs and Border Protection (CBP) initiated analysis and development of a statistically valid risk-based bonding framework in July 2016 in response to three items that call on CBP to develop and apply risk assessments to improve collections:
 - Trade Facilitation and Trade Enforcement Act (TFTEA), Section 115 (February 2016)
 - GAO Report (August 2016) - *AD/CVD: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk*
 - *Executive Order 13785 (March 2017) - Establishing Enhanced Collection and Enforcement of AD/CVD and Violations of Trade and Customs Laws*

Pipeline Operator Bonds

- The bond working group requested a written position from CBP Headquarters regarding whether a pipeline operator needs an Activity Type 2 – Custodial and/or Activity Type 3 – International Carrier bond due to conflicting information from various CBP offices.

Monetary Guidelines on Setting Bond Amounts

- The bond working group recommended that Customs Directive 3510-004, Monetary Guidelines for Setting Bond Amounts, be reviewed and updated.

Issue:

Risk-Based Bonding Initiative

- Section 115 of TFTEA requires CBP to develop importer risk assessment guidelines to adjust bond amounts.
 - Validated Customs-Trade Partnership Against Terrorism Tier 2 and Tier 3 participants are excluded from this requirement.
- CBP heard the Trade community's continued concerns regarding:
 - The need for sufficient time to prepare for any new requirement(s),
 - The proposal to use the rulemaking process to make any necessary regulatory changes, and
 - The Trade's desire to have the opportunity to provide formal comments on the proposed requirements.

Current Status:

Risk-Based Bonding Initiative

- CBP continues to work on the risk based bonding initiative and plans to implement in two phases.
 - Phase one, is focused on requiring an additional risk-based single transaction bond (STB) for certain entries posing a revenue collection risk to CBP. Phase two, is focused on updating the continuous bond (CB) methodology.

- CBP is pursuing regulatory changes via the rulemaking process, allowing for formal comments on the proposed requirements.

Pipeline Operator Bonds

- CBP discussed the type(s) of bonds required for pipeline operators (i.e. Activity Type 2 – Custodial and/or Activity Type 3 – International Carrier) internally.
- CBP proposed guidance to the bond working group on November 19, 2020.
 - Proposed guidance: *Pipeline operators will be required to have either an activity type 1 – importer/broker bond or an activity type 2 – custodian of bonded merchandise bond based on the circumstances of each transaction. CBP does not see a need at this time for a pipeline operator to obtain an activity type 3 – international carrier bond.*
- No party objected to the proposed guidance.
- CBP is drafting written guidance.

Monetary Guidelines on Setting Bond Amounts

- The bond working group continues to review Customs Directive 3510-004, Monetary Guidelines for Setting Bond Amounts, and the document has been updated to address comments of the members and provide a snapshot of current policies and procedures.

Next Steps:

Risk-Based Bonding Initiative

- CBP will issue the proposed rulemaking and review comments received.

Pipeline Operator Bonds

- CBP will issue guidance to the bond working group and share externally.

Monetary Guidelines on Setting Bond Amounts

- The bond working group will review the final draft interim directive.
- CBP will finalize the interim directive and publish in FY 2021.

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Date: March 1, 2021