

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

April 2020



U.S. Customs and
Border Protection



Trade Policy and Programs/Office of Trade
Intelligent Enforcement Subcommittee/Bond Working Group
April 2020

Action Required: Informational

Background:

Risk-Based Bonding Initiative

- Risk-based bonding analysis was initiated by CBP 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*
- Development of a statistically valid risk-based bonding framework began in July 2016 in response to two Government Accountability Office (GAO) recommendations.

FTZ and Pipeline

- The bond working group members notified CBP Headquarters (HQ) of several ports that have requested Foreign Trade Zone (FTZ) bonds that they believe are excessive and requested resolution.
- The bond working group requested guidance from CBP HQ on whether a pipeline operator needs an activity code 3 bond due to receipt of conflicting information from various CBP offices.

Bonds

- Due to impacts on the Trade due to the COVID-19 pandemic, the bond working group requested additional time to comply with bond insufficiency notices.

Issue:

Risk-Based Bonding Initiative

- Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA) requires CBP to develop importer risk assessment guidelines to adjust bond amounts.
 - Validated Customs-Trade Partnership Against Terrorism (C-TPAT) Tier 2 and Tier 3 participants are excluded from this requirement.
- CBP has heard the Trade community's continued concerns regarding the risk based bonding initiative and are addressing the following:
 - 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 the risk-based bonding initiative 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 methodology.
- CBP is taking additional time to address the concerns raised by the Trade, and will take the following actions:
 - Pursue regulatory changes via the rulemaking process, allowing for formal comments on the proposed requirements.
 - Form an inter-agency project team (IPT) to discuss the risk-based bonding initiative, inform decisions and gain support moving forward. The IPT will be made up of representatives from, but not limited to, the United States Trade Representative, Department of Commerce and Department of Treasury.
 - Continue to have internal conversations with CBP's Office of Chief Counsel, Office of Finance and Rulings and Regulations to ensure that the risk-based bonding requirements are consistent with our legal authority and judicial guidance, as well as ensure optimal protection of the revenue.

FTZ and Pipeline

- CBP is holding internal discussions in conjunction with the Office of Finance, Office of Field Operations - Cargo Conveyance Security and Port management on a path forward.

Bonds

- Due to impacts on the Trade due to the COVID-19 pandemic, CBP granted an extension for March insufficiency notices. See CSMS #42083777.

Next Steps:

Risk-Based Bonding Initiative

- CBP will form an inter-agency project team (IPT) for risk based bonding.

FTZ and Pipeline

- CBP will provide guidance regarding pipeline operator bonds to the bond working group and on CBP.gov.

Bonds

- CBP will continue to monitor the bond insufficiency notices and provide additional guidance via CSMS message as needed.

Submitted by: Randy Mitchell, Office of Trade, Commercial Operations, Revenue and Entry Division,
Randy.Mitchell@cbp.dhs.gov, (202) 325-6532 Date: April 2, 2020