

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

December 2020



**U.S. Customs and
Border Protection**



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

Action Required: Informational

Background:

Risk-Based Bonding Initiative

- Risk-based bonding analysis and development of a statistically valid risk-based bonding framework was initiated by CBP in July, 2016 in response to three items that called upon 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*

Foreign Trade Zone (FTZ) Operator Bonds

- The bond working group members notified CBP Headquarters (CBP HQ) of several ports that have requested FTZ bonds that they believe are excessive and requested resolution.

Pipeline Operator Bonds

- The bond working group members notified CBP HQ that various guidance has been provided regarding the type(s) of bonds required for pipeline operators. The bond working group has requested a written position from CBP.

Monetary Guidelines on Setting Bond Amounts

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

Temporary Importations under Bond (TIBs)

- The bond working group has notified CBP HQ of several Centers of Excellence and Expertise that have requested Single Transaction Bonds (STBs) for TIBs secured by continuous bonds. The bond working group has requested clarification on TIB bonding requirements.

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 (C-TPAT) Tier 2 and Tier 3 participants are excluded from this requirement.
- CBP has heard the trade community's 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 community'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 STB for certain entries posing a revenue collection risk to CBP.
 - Phase two is focused on updating the continuous bond methodology.
- CBP will pursue regulatory changes via the rulemaking process, allowing for formal comments on the proposed requirements. CBP intends to publish an Advanced Notice of Proposed Rulemaking (ANPRM) by the end of calendar year 2020, followed by two Notices of Proposed Rulemaking (NPRM) and two Final Rules (one for STBs and one for Continuous Bonds).

FTZ Operator Bonds

- CBP briefed the bond working group on the interim guidance memorandum issues August 28, 2020 and issued external guidance via CSMS message #44578062 on October 28, 2020.

Pipeline Operator Bonds

- CBP held internal discussions regarding the type(s) of bonds required for pipeline operators (i.e. Activity Type 2 – Custodial and/or Activity Type 3 – International Carrier).
- CBP’s proposed guidance was discussed with 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.

Monetary Guidelines on Setting Bond Amounts

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

Temporary Importations under Bond

- CBP has researched each of the scenarios raised by the trade. The bonds used to secure each TIB were not in an amount required per 19 CFR 10.31(f). Center requests for STBs were determined to be valid acts meant to protect the revenue.

Next Steps:

Risk-Based Bonding Initiative

- CBP will issue the ANPRM and review comments received.

Pipeline Operator Bonds

- Guidance will be drafted by CBP and provided to the bond working group and shared externally.

Monetary Guidelines on Setting Bond Amounts

- An interim directive will be finalized by CBP and reviewed with the bond working group.

Temporary Importations under Bond

- Guidance will be drafted by CBP and provided to the bond working group and shared externally.