

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

October 2020



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



Trade Policy and Programs/Office of Trade
Intelligent Enforcement Subcommittee/Bond Working Group
October 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 call upon CBP to develop and apply risk assessments to improve collections:
 - Trade Facilitation and Trade Enforcement Act of 2015 (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 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 that various guidance has been provided regarding the type(s) of bonds required. 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.

Issue:

Risk-Based Bonding Initiative

- Section 115 of the 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'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 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 pursuing 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 and two final rules (one for STB and one for continuous bonds).

FTZ Operator Bonds

- CBP held internal discussions in conjunction with the Office of Finance, Office of Field Operations – Cargo and Conveyance Security, and Port management and issued an internal interim guidance memorandum to ensure nationwide consistency in FTZ operator bond amounts.
- CBP briefed the bond working group on the interim guidance memorandum.

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) and is working to issue written guidance.

Monetary Guidelines on Setting Bond Amounts

- The bond working group has begun review of Customs Directive 3510-004, Monetary Guidelines for Setting Bond Amounts.

Next Steps:

Risk-Based Bonding Initiative

- CBP will issue the ANPRM and review comments received.

FTZ Operator Bonds

- CBP will issue a Cargo Systems Messaging Service (CSMS) update containing guidance.

Pipeline Operator Bonds

- CBP will issue external guidance.

Monetary Guidelines on Setting Bond Amounts

- The bond working group will continue to review and update the Customs Directive 3510-004, Monetary Guidelines on Setting Bond Amounts.