

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

June 2021



U.S. Customs and  
Border Protection

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

- 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 desire to have the opportunity to provide formal comments on proposed requirements.
- CBP has pursued several options toward the implementation of Risk-Based Bonding.
  - CBP pursued a plan to implement an additional risk-based antidumping and countervailing duty (AD/CVD) single transaction bond (STB) for certain entries in late September 2019. Due to concerns from the trade community voiced via a Trade Support Network letter to EAC Smith and via the August 2019 COAC meeting, CBP agreed to delay deployment.
  - CBP pursued an alternative risk-based AD/CVD STB framework to mitigate the trade community's concerns as well as CBP litigation concerns with the proposed requirement. CBP had planned to communicate this proposal via Advance Notice of Proposed Rulemaking (ANPRM).

## **Current Status:**

### **Risk-Based Bonding Initiative**

- In May 2021, CBP decided not to proceed with the draft ANPRM in part due to the complexity of the framework in determining if an additional AD/CVD risk-based STB would be required and in what amount.
- CBP intends to implement risk-based bonding by leveraging existing authorities and completing several initiatives to include:
  - Updating bond policy to no longer permit persons suspended or debarred by CBP (or another Federal agency, as applicable) to use a continuous bond to secure customs activities.
  - Updating internal guidance and procedures to better define when to consider use of Single Transaction Bonds (using the existing formula/process) to protect revenue, particularly because of AD/CVD concerns and, fully automating continuous bond sufficiency checks.
  - Publishing a Notice of Proposed Rulemaking (NPRM) to incorporate eBond in 19 CFR 113 Regulations, to update eBond functionality from a test to a requirement, eliminate the majority of paper bond processing, and ensure bonds are on file.

### **Pipeline Operator Bonds**

- CBP is drafting written guidance.

### **Monetary Guidelines on Setting Bond Amounts**

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

## **Next Steps:**

### **Pipeline Operator Bonds**

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

### **Monetary Guidelines on Setting Bond Amounts**

- CBP intends to publish by the end of Fiscal Year 2021.

### **Risk-Based Bonding Initiatives**

- CBP is engaging with the bond working group and the overarching trade community to discuss each initiative.

### **ACE eBond enhancements**

- CBP will collaborate with the bond working group to identify and pursue enhancements to ACE eBond.