
Great Idea Form

Requirement Summary

GIF #:	CSPO_GIF_692 (REV-003)	Status:		Submit Date:	3/14/08
Title:	E-Bond Concept				

Origination

Requirement Initiator:	Michael Davenport and Chip Bown
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Sponsor:	Valarie Neuhart, CBP

Source:

Source:
Trade Request

Business Sponsor

Business Office:	Office of Information and Technology
Executive Director for the Business Office:	Lou Samenfink

CSPO Planning

Change to CSPO System?	
Change Planned?	Where/When Planned?
Assign to System:	Assign to Release/Delivery:

Requirements Description

Business Area:	
Request Type:	Business Need
Impacts Trade?	Yes
Description of Change:	<p>SEE ATTACHED REV-003 FOR FULL PROGRAM DESCRIPTION</p> <p>An electronic mechanism needs to be provided for the filing, amending, canceling and monitoring of all current and future bonds. This document begins with the January 21, 1999, U.S. Customs Service Electronic Bond Requirements, Final Report, which is incorporated by reference. Further, the attached report "eBond System Description and Requirements", version 11, expands upon the concepts described as follows:</p> <p>An electronic bond system would have to provide certain, basic functionality:</p> <ol style="list-style-type: none"> 1. Filing with and acceptance by Customs of bonds. 2. Filing with and acceptance by Customs of riders and amendments. 3. Filing with and acceptance by Customs of termination requests from importers or their customs brokers and sureties in compliance with the regulations. 4. Filing with and acceptance by Customs of reinsurance documents and bonds with co-sureties. 5. Queries and Downloads 6. Monitoring for bond sufficiency. 7. Appropriate electronic notifications in connection with these

	transactions.
Benefit of Change:	Both Customs and the trade would benefit from an electronic bond system. The trade and Customs will realize faster, more accurate, more efficient filing of bonds and riders. An electronic bond environment will permit sureties to better monitor liability, address claim issues, and manage their Customs bond programs. Customs will be able to reduce the manpower associated with the handling of bonds, eliminate the storage requirements for paper bonds, better manage the bonds (avoiding technical deficiencies and missing bonds), and improve bond sufficiency monitoring (decreasing write-off from bond saturation).
Impact Assessment:	

System/Subsystem

System:		Cargo Business Area:	
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Implementation Requirements

Needed By Date:	A2, A3	Change Urgency:	
Level of Effort:		Cost Estimate:	

Sponsor Recommendation

Sponsor Recommendation:	
Sponsor Comments:	

Board Disposition

Date:	Disposition:	Comments:

Next Steps:

Next Steps:

Reasons for

Return/Deferral/Withdrawn/Rejection/Forward to PO

Reason for Return:	
Reason for Deferral:	
Reason for Withdrawal:	
Reason for Rejection:	
Reason for Forward to PO:	

Secretary Comments:

Comments:

Related Items:

CR#:	CR Name:

PTR#:	PTR Name:

[Attachments](#)

Attachments:	
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[Action Descriptions](#)

[Document History](#)

Action History

Date:	User Name:	Note:

Update History

Date:	User Name:	Note:

Automated Commercial Environment—Requirements Recommendation

Date:	October 5, 2001
Number:	REV-003, Version.2 (Revised 9/23/04)
Requestor:	TSN Revenue Committee
Customs Co-Chair:	Robert B. Hamilton
Trade Co-Chair:	James Philips

Requirement

An electronic mechanism needs to provide for the filing, amending, canceling and monitoring of all current and future bonds. This document begins with the January 21, 1999, U.S. Customs Service Electronic Bond Requirements, Final Report, which is incorporated by reference. Further, the attached report "eBond System Description and Requirements", version 11 which expands upon the concepts described as follows.

An electronic bond system would have to provide certain, basic functionality:

1. Filing with and acceptance by Customs of bonds.
2. Filing with and acceptance by Customs of riders and amendments.
3. Filing with and acceptance by Customs of termination requests from importers or their customs brokers and sureties in compliance with the regulations.
4. Filing with and acceptance by Customs of reinsurance documents and bonds with co-sureties.
5. Queries and Downloads
6. Monitoring for bond sufficiency.
7. Appropriate electronic notifications in connection with these transactions.

Business Need

Essentially, the filing of bonds with Customs has not changed in 40 years and is a paper intensive process. The surety industry already deals with other Federal, State and Local Government agencies in paperless environments where bonds are required by law or regulation. To move forward with its vision of a truly paperless environment, Customs must automate the bond process. An electronic bond process would streamline and reduce lag times associated with the filing of bonds and riders, and permit Customs and the surety industry to do a better job of managing their bonds for accuracy and sufficiency.

Technical Need

Because the electronic record will be the only record of the bond's existence the system must preserve the electronic bond record as originally filed.

A Bond Filer Authorization File will allow each surety to authorize customs brokers and other ACE Accounts to file single transaction and continuous bonds and govern limitations on that

authority. The authorizations for single transaction and continuous bonds will be separate and may vary in limitations. (The January 21, 1999 report under section 3.1.1 incorrectly describes this as a Power of Attorney file and should be renamed.)

There must be a clear and unambiguous connection between the importer of record, the bond principal and the entry or other activities secured by the bond. The system must provide for certain changes to the bond that may be made by rider. All such changes must be prospective and a historical record of this activity preserved in the system.

There also must be flexibility to add new riders to the system if there will be a change to the underlying bond contract. An example would be the periodic payment proposal. Before an importer begins using any extended payment option beyond 10 days, the system must verify that a bond rider is on file for that usage.

Benefits

Both Customs and the trade would benefit from an electronic bond system. The trade and Customs will realize faster, more accurate, more efficient filing of bonds and riders. An electronic bond environment will permit sureties to better monitor liability, address claim issues, and manage their Customs bond programs. Customs will be able to reduce the manpower associated with the handling of bonds, eliminate the storage requirements for paper bonds, better manage the bonds (avoiding technical deficiencies and missing bonds), and improve bond sufficiency monitoring (decreasing write-off from bond saturation).

Risks

The data integrity is the most significant risk associated with this system. In the event of a claim there must be system safeguards to insure there were no unauthorized alterations to the original bond such as discrepancies in bond amounts, effective and termination dates, surety etc.

Related Subcommittees

Entry

Priority: Critical High Medium Low

eBond System Description and Requirements

The purpose of this document is to provide, in a narrative form, a more detailed description of the requirements to implement REV-003. REV-003 identified seven (7) areas of functionality, which are described in-depth below.

1. Filing with and acceptance by Customs of bonds
2. Filing with and acceptance by Customs of riders and amendments
3. Filing with and acceptance by Customs of termination request from importer or their customs brokers and sureties in compliance with the regulations
4. Filing with and acceptance by Customs of reinsurance documents and bonds with co-sureties
5. Queries and Downloads
6. Monitoring for bond sufficiency
7. Appropriate electronic notifications in connection with these transactions.

Bond Filing

The proposed electronic bond system (“System”) must provide for the electronic filing of all bonds currently filed with U.S. Customs. This currently consists of the CF301, including, single transaction and continuous bonds, airport security bonds, ITC

exclusion bonds, immigration bonds, and Miami In Bond Export Consolidator Bonds.¹ Further, the System must accommodate any new bond forms that may arise from time to time.

To ease the implementation of the various bond forms, the System must consolidate all various coverages under the one CF301 form. This would require adding new activity codes for each bond requirements covered by the regulations².

The System would provide for bonds being filed, electronically, on behalf of the principal from two sources; a surety administrator, who may be the actual surety or a third-party administrator,³ or a bond filer, who could be a customs broker or other entity permitted to file bonds for a surety⁴.

When a bond filer submits bond data, the System must first verify that the bond filer has the authority to file the bond, based on information contained in a Bond Filer Authorization File (“Authorization File”) that will be maintained by the surety administrator. If the bond did not fall within the parameters set forth in the Authorization File for the particular bond filer and surety, a rejection message would be sent back to the

¹ Airport security bonds (this coverage is also provided in activity codes 1,2, & 3) are required by principals who desire access to Customs Secured area. This may include construction companies, security companies, cleaning services, food service companies and vessel owners. ITC bonds may be required by importers of goods subject to an ITC exclusion order. Immigration bonds are, generally, for personnel of foreign airlines and shipping lines. The Miami In-Bond Export Consolidator Bond where required of foreign freight forwarders and non-vessel owned common carriers.

² This would require regulatory changes to merge the bond forms and a change to the paper bond form. The committee feels that the benefits, both procedurally and systemically, would far outweigh the work to change and maintain the corresponding regulations.

³ The surety is the insurance company who takes on the obligation of guarantying the principal on the bond. In some cases a surety will handle its Customs bond program, while others may use the services of a third-party to act as its managing general agent. For the purposes of this document, surety administrator will mean either of these parties and the account that will be the systemic point of contact for the surety.

The account system will need to distinguish between sureties and the insurance agents or insurance brokers (or other accounts) who may act as a managing general agent for a surety. The account system must permit a surety account to select another account to administer its surety program.

⁴ These are companies (including Customs brokers) that file bonds with Customs for principals. In the paper environment this is done by either giving the bond filer a pre-signed (by the surety) bond or by issuing Customs surety powers of attorney to individuals of the company. In the e-bond environment, the surety will authorize Customs to accept bonds filed by these companies in the “Bond Filer Authorization File”.

bond filer indicating that the bond filer was not authorized to file that bond. If the bond passes the edits of the Authorization File, the bond would be deemed accepted by the surety.

Bonds filed by the surety administrator would go directly to the Bond Approval Process, as there would be no need to check for filer authorization (See the attached figure provided by Jim Byram of the eCP)

Next the System must perform Customs approval edits to check for bond adequacy, data completeness, coverage duplication, etc., for the bond being submitted. If the bond did not pass these edits, a rejection message would be returned to the filer indicating all failed edits. If approved, the bond information would be saved in Customs' database and an approval message would be returned to the bond filer and to the surety administrator, if the surety administrator did not transmit the bond. The approval message must include a re-transmission of all the submitted bond data along with any approval data elements⁵, such as the Customs-Assigned number for continuous CF301 bonds and the name and address of all principals from the account file⁶.

In addition to the approval notification to the bond filer/surety administrator the system shall, for portal accounts, notify the bond principal of the bond filing⁷. Further, it may be the filer's desire to notify another portal account, such as a customs broker, of the acceptance of the bond. The System shall include a notify-party data element, which, if provided, would also send a narrative message to the third party, advising of the bond approval.

The System must also permit Customs to input data from bonds that are filed in a paper format⁸. The same input edits contained in the ABI environment, where applicable, shall be applied when inputting the paper filed bond along with all ebond edits. The System must include an indicator, which would differentiate between electronically filed and paper filed bonds.

If a paper bond is filed for an eBond surety, the surety administrator shall receive an electronic approval notification as indicated above. Further, eBond capable bond filers

⁵ Customs must also develop an appropriate process to handle disputes arising from discrepancies between the bond information contained the System and transmitted data provided by the bond filer.

⁶ Because Customs will not make any checks between the principal's name and address submitted in the bond data message and because the bond filer may not have access to the principal's name and address information prior to the filing of the bond, Customs must return the principal's name and address to give the bond filer/surety administrator the opportunity to review the information Customs has on file.

⁷ The eBond committee suggests it would be appropriate to enter this message into the account's Significant Activity Log.

⁸ For electronically filed bonds, the bond record will become the evidence of the bond, however, the paper bond will be the evidence for paper filed bonds.

who file bonds for non-eBond sureties or otherwise need to file a paper bond shall have the ability to indicate their account id on a paper bond filing. Customs would input this data to enable query capabilities to the bond filer.

Data integrity

One of the most important parts of the System is insuring the integrity of the bond record. The System must maintain a historical record of any changes to the bond record and the surety administrator must also receive a data message reflecting any change(s). The record and the message shall note the date of the change, who made the change, and the details of the change.

CF301's

The System must provide for the filing of bonds for each of the 12 activity codes currently provided for on Customs Form 301. Continuous bonds are only applicable to activity codes 1, 1A, 2, 3, 3A, 4, and 5; while single transaction bonds may be filed under activity codes 1, 1A, 3, 6, 7, 8, 9, 10. Further, additional activity codes shall be assigned to correspond to the miscellaneous bonds to be incorporated into the CF301.

Activity Code	Description	CFR 19 Section
1	Importer or Broker	113.62
1A	Drawback Payment Refunds	113.65
2	Custodian of Bonded Merchandise	113.63
3	International Carrier	113.64
3A	Instruments of International Traffic	113.66
4	Foreign Trade Zone Operator	113.73
5	Public Gauger	113.67
6	Wool & Fur Products Labeling Acts Importation	113.68
7	Bill of Lading	113.69
8	Detention of Copyrighted Material	113.70
9	Neutrality	113.71
10	Court Costs for Condemned Goods	113.72

Certain data elements are common to both continuous and single transaction bonds. These include the principal's name, address and importer number; the surety's name, address, surety code, surety agent name, social security number, service of process address; bond amount; execution date; and port code. The principal's name, address, and importer number^{9,10}; surety code; bond amount; activity code; port code¹¹; and execution date will still be required data elements. However, the surety code will be sufficient to identify the surety's name and address, and service of process address, which will be a part of the surety's account information. While, the ebond process eliminates the need for identifying the person(s) signing the bond for the principal or surety, the System must

⁹ The importer number is either the principal's Federal Employer Identification Number (EIN), Social Security Number, or a Customs assigned number. The subcommittee recommends this number continues to be a Customs primary account identifier. This has been the legacy identifier used by Customs on entries, bonds, claims etc. Also, the Revenue Branch utilizes this number to identify entities with other government branches.

¹⁰ For eBonds, the importer number will be the primary identifier of the principal. However, for consistency, the principal's name and address will continue to be sent in the data message.

¹¹ While the port code must continue to reflect the port code of the entry for single transaction bonds and the port code where a paper bond is filed, it is recommended that the eBond system assigns a distinctive port code for electronically filed continuous bonds.

save the account identifier of the party filing the bond. To assure compatibility with both current and future paper bonds, the System must provide a data element for each surety agent's social security number and continue to maintain the surety Power of Attorney file.

The principal's name and address must be retained as part of the bond record and must be separate and distinct from any information on the ACE account record. Changes made by the account to its name and/or address shall not affect the bond record¹² and, in cases where the account has a continuous bond, these changes shall only be permitted through the filing of bond riders (see below).

The regulations¹³ also permit the bond to cover multiple principals (co-principals) and additional unincorporated divisions, tradenames, and/or locations, under which the principal does business. While these parties are considered "bond users", the System must distinguish whether that party is a principal or another named user. Principals and users are distinguished by their legal status. Principals are legal entities (such as corporations, partnerships, individuals, etc.) and, for U.S. entities, are generally distinguished by having unique "Employer Identification Numbers". The regulations also specify that each principal on any one bond have the same legal status, so each principal record must indicate the principal's legal status and must be that same type. Customs must develop a list of the legal statuses to be used in the System and the list must be able to be changed if new legal statuses are developed. Further, where applicable, the System must capture the state or place of incorporation.

On continuous bonds, "users"¹⁴ (i.e., other than a principal) may appear on the bond at the time of filing and may be subsequently added or deleted by rider (see section below). Therefore, the System must individually save the effective date and termination date for all bond "users".

The System must also permit the filing of bonds with multiple sureties (co-surety). For each surety obligated on a bond there must also be an associated limit of liability for that surety. The sum of each surety's liability must equal the bond amount. The bond

¹² It is important that the name on the bond matches the entry documents. Any discrepancies could hinder Customs collecting under a claim. As stated in REV-003, "There must be a clear and unambiguous connection between the importer of record, the bond principal and the entry or other activities secured by the bond".

¹³ See Sec 113.34

¹⁴ Generally, bond users have very similar importer numbers to that of a (co-)principal – only a 2 digit suffix is different. However, it is possible a (co-)principal uses an importer number assigned by Customs. Any user of that entity would be issued its own unique Customs assigned importer number and the "suffix text" would not apply. Therefore, the System must identify users from principals

filer must also have authority, via the Authorization file, for all sureties on the bond, in the appropriate amount¹⁵.

In addition to the data elements required for a specific bond, the bond record shall include a reference field and the bond filer's "surety producer number"¹⁶. The reference field would be a character data element that permits the bond filer to communicate information to the surety administrator or the surety administrator may use for transmission identification. No edits would be performed on this field and its use is discretionary. The bond filer's surety producer number is a data element used for identifying itself to the surety administrator. No edit would be performed on this field except to require that the field is not blank. These data elements would be included in the approved bond record sent to the surety administrator.

Pursuant to sections 141.20 and 142.4 of the regulations, there are two instances in which one bond may replace another filed at the time of entry: (a) a "superseding" bond and (b) a "substituted" bond.¹⁷ Either type of bond permits a change in the principal who will be responsible to Customs for the underlying transaction. The System must provide for the tracking of all bonds filed in connection with an entry. Therefore, in either instance, when a single transaction bond is filed to either "supersede" or "substitute" the previously filed bond a data element shall be included to indicate which type of bond is being filed.¹⁸

Other data elements and system requirements will depend on whether the bond is filed as a continuous bond or a single transaction bond.

Single Transaction bonds

Single transaction bonds ("STB") are issued to cover a specific entry or some specific aspect of an entry. It may be the only bond covering the entry, it may be filed to replace a bond already issued to cover the entry (see above), or it may be issued to supplement another bond or bonds covering the entry. In some cases Customs may require additional bonds to provide more coverage than is afforded under a principal's continuous bond or

¹⁵ This authority could be provided either on a blanket or specific approval in the Bond Filer Authorization file.

¹⁶ It is envisioned that bond filers would use these fields to identify its self and provide reference information to coordinate billings between the bond filer and the surety administrator. This information would also be used as a mechanism to coordinate transmission between Customs and the party filing the bond.

¹⁷ A "superseding" bond assumes all liability for duties, fees, etc., as of the date of the original filing of the superseded bond; a "substituted" bond assumes liability accruing on and after the date the substituted bond is filed.

¹⁸ Outside of the E-Bond system, there is a requirement for sureties to receive information of all entries covered by the bonds, whether by single transaction bond or continuous bond. This notification system must also include a process to notify the current surety when a superseding bond or a substitution bond is filed for the entry. Further, when an entry is canceled, the surety must also be notified.

single transaction bond, such as cases where anti-dumping or countervailing duties are bonded, or where the estimated duties of an entry exceed the continuous bond on file. The System must identify the purpose of the bond so Customs can determine that the bond is being filed in the proper amount and so it can be accurately reported to the surety.

Three additional data elements (other than those described above) are required in the STB record: entry number¹⁹, transaction date, and special coverage indicator. The special coverage indicator will indicate if this bond is a superseding bond, a substitute bond or supplemental bond. The System must also provide an additional data element for the antidumping or countervailing duty case number, or any other reference Customs may use to identify the situation requiring a special coverage bond.

As previously indicated, there may be instances where multiple single transaction bonds are filed on an entry – e.g. one for coverage of the underlying import entry, one for the anti-dumping duties, and one for the countervailing duties. The use of multiple STBs will only apply in circumstances where by the entry transaction requires a superseding bond, bond substitution or some type of supplemental bond. While the System must allow for multiple bonds on an entry, it must not allow the aggregation of STBs to circumvent approval limits²⁰. The indication of the type of bond (AD, CVD, superseding, etc.) in conjunction with the entry number will be sufficient for the surety to identify its bond exposure.

There also must be internal provisions for voiding a bond, as in the case of an entry being cancelled (see footnote 18 above). This function would not be available to the surety administrator or the filer, but if a bond is voided, there must be a voiding message sent to the surety administrator.

Further, because a single transaction bond is submitted at release, before all information about a shipment is available, the entry summary may contain information that may affect the bond amount. The System shall permit the filing of a “replacement” bond in a new amount (higher or lower), in the name of the same principal, up to the time of acceptance of the entry summary. A “replacement” bond will void any previously filed bond (of the same type and for the same principal) and is subject to the same edits as the bond it replaces and must be verified using the Authorization file. After the acceptance of the entry summary the System must not permit the filing of a “replacement” bond.

¹⁹ Or whatever other control number (such as seizure number, vessel name, etc) used by Customs to identify the transaction being covered by the bond. This control number will be the number Customs will reference when making a claim, and the number sureties will reference to retrieve entry data.

²⁰ For example, if a shipment requires a \$5,000,000 STB, and a filer’s limit is only \$500,000, the system must not allow the filing of 10 STBs in an attempt to achieve the required bonding and circumvent the filer or surety’s bond amount limitations.

While the System will accept the filing of a single transaction bond at the time of entry in conjunction with the electronic filing of the entry, the System must also accommodate the filing of a paper STB, independent of the filing of the entry. This functionality would be limited to Customs input of the information. When the bond is not filed as part of the entry, the entry System must check the eBond System for any applicable bonds for its sufficiency checks.

Continuous

Because the continuous bond covers multiple transactions and is in effect over time, it has different requirements than a single transaction bond. Unlike the STB, it has a different approval process, may be amended by rider, and may be terminated.

The additional data elements associated with the continuous bonds are: effective date²¹, termination date²², bond application information, and the Customs assigned bond number. The Customs assigned bond number is a unique, system-generated number assigned after the bond has been approved by Customs. This will be the bond identifier for any future transmissions with Customs. Currently, this number is a 9-digit number consisting of the first 2 digits of the port code where the bond is filed, the last 2 digits of the year the bond is filed, and a sequential 5 digit counter unique to each year-port combination. (PPYYXXXXX). As port code has no relevance in the System, to help to identify electronically filed bonds, a separate code shall be assigned for continuous bonds filed in the System and used in the Customs assigned bond number.

Many importers employ multiple Customs brokers to handle their shipments. Confusion sometimes arises when these brokers make uncoordinated changes to the principal's bond. Therefore, through their account portal, a principal shall be permitted to select one broker who will have authorization to make changes or terminate their bond. This selection would not be required; however, if the principal did chose to make this designation, the selection would be limited to only one or no broker.

Bond Acceptance Process

The Bond Acceptance Process is comprised of a confirmation and verification of the bond elements submitted by the bond filer and Customs analysis of bond adequacy.

The System will verify that the necessary data elements have been transmitted and perform edits to determine whether the data is within pre-established criterion. In addition the System must perform the following edits:

- The importer number has a corresponding account which includes the principal's name and address.
- The surety is on the Treasury departments Circular 570 list of approved sureties.

²¹ The "effective date" defines the first date when the bond can be used to secure an entry.

²² The "termination date" defines the last date when the bond may be obligated.

- The bond amount is within the surety's Circular 570 limit plus any reinsurance (see Reinsurance Section below). For bonds with co-sureties, this edit must be performed for each surety.
- All principals have the same legal status.
- Execution date is prior to the bonds transaction or effective date.
- For continuous bonds, the System must verify that there is no overlap in coverage, for all principals or users, on any other bond for the same activity code^{23,24}
- For paper bonds, the surety agent signing the bond has a valid surety power of attorney and bond amount is within the limits specified in the surety power of attorney file. The effective date of that power of attorney is prior the execution date of the bond. Further, the name of all principals and users must match the account file. The address of principals must also match.

The System must make an adequacy check of the bond amount before accepting. The guidelines for making this check, for each activity code, are defined in Customs Directive 3510. These guidelines are subject to change, so the System must be able to accommodate changes to them.

As part of Customs on-going sufficiency procedures Customs may request a bond larger than may be required by the guidelines. Also, Customs may, under special circumstances, permit bonds less than the guidelines. To accommodate these situations, Customs shall be able to specify specific bond adequacy amounts that would override the guidelines as part of the account file.

All the data necessary to determine the adequacy of a single transaction bonds, for any activity code, should be found in its corresponding transaction. However, for continuous bonds an application must be filed with appropriate data elements for Customs to determine the bond amount. For activity codes 1 and 1A, the bond application data shall be included as part of the bond filing data.

For the other activity codes, generally, an additional application, which is submitted separately from the filing of the bond, is sent to Customs for determination of the proper bond amount²⁵. Customs must include on the principal's account file all permitted

²³ Section 113.11 of the regulations prohibits a principal from having more than one continuous bond in effect for the same activity code.

²⁴ For bonds to be concurrent the termination date of the original bond and the effective date of the new bond must be different by one day. For example, if a bond were terminated on 10/1/2002, a new bond, to be concurrent, would be filed with an effective date of 10/2/2002.

²⁵ Today, because the filing of the application and filing of the bond may be done separately, Customs will hold the bond if the bond is filed prior to the application

activities and its required bond amount. When the bond is filed the System would check that the new bond meets or exceeds this required amount.

Riders

Changes to the bond are accomplished through the filing of riders. The regulations provide for riders to change the name of a principal, change the address of a principal, add a user(s), and delete a user(s)^{26,27}. These are the only changes permissible to the bond. All other changes, such as adding or deleting a principal or amending the bond amount, require the existing bond be terminated and a new bond filed with the changes. The System shall allow the filing of either a paper or an electronic rider to a paper or an electronic bond.

When a rider is submitted the System must first check the Authorization file to determine if the filer is permitted to file the rider. The rider must include the Customs assigned bond number, the rider's effective date, the importer number of the user being affected and the new name, address or new user's name. When a deletion rider is filed, the effective date of the rider is also the termination date for that user.

The System must also provide for "coverage amending" riders. These riders would be for principals who participate in special Customs programs, which extend or modify coverage provided by the bond and require the surety's consent. Currently, use of reconciliation, semi-monthly payment of deferred taxes, warehouse lease stipulations and, when instituted by Customs, periodic payment are instances of coverage amending riders. These types of riders may be filed with the bond, at its initial filing, or at a later date. The rider coverage may be terminated without terminating the underlying bond.

The System must recognize a date when the coverage becomes effective and when it is terminated. Further, it is possible that coverage may be added, terminated then added again over the life of the bond.

Upon acceptance of any rider, an acceptance message must be returned to the bond filer and the surety administrator, if not the filer. The same processes for principal and third party notification should also apply to the rider. The acceptance message shall

being approved. The eBond system must permit the bond be accepted prior to accepting of the application. Upon approval of the application and if the bond is sufficient Customs can authorize the principal's activity.

²⁶ The regulations do not provide for the changing of the name of a user, but by deleting the user and adding it back on using the new name, the same thing is accomplished. However, this gave Customs systemic problems. As a workaround, Customs instructed its bond desk personnel that when receiving a deletion/addition rider combination using the same importer number to use the name change function instead of the deletion/addition function.

²⁷ Regulations and rulings prohibit the addition or deletion of a co-principal. When processing any addition or deletion riders, the System must confirm that the user being added or deleted is not a principal, but rather an unincorporated division or tradename of an existing principal.

include all the data included in the rider transmission along with an approval indicator. Any rejection of a rider shall include all reasons for the rejection to the filer of the rider.

Along with making the changes, the System must keep a historical record of all riders.

Termination

The regulations permit continuous bonds to be terminated by either the principal, with ten(10) business days notice to Customs, or by the surety, with thirty(30) days notice to Customs²⁸. Unlike a rider, a termination does not require concurrence between the principal and the surety and either party may act independent of the other. After the termination date, the System shall no longer permit transactions against the bond. The System must allow paper terminations of electronic bonds and electronic terminations of paper filed bonds.

Because Customs cannot terminate a bond, the System must allow Customs to deem a bond insufficient, which would not permit its use for further transactions. This action shall generate an electronic message to the surety administrator and the bond principal(s)²⁹.

When a surety administrator requests termination, it must indicate whether the termination is at the surety's request or at the principal's request and provide a termination date. Surety administrators that are transmitting a termination request on behalf of the principal must be granted such authority by the principal and be able to provide such evidence, if requested.

Bond filers may terminate a bond based on the assumed authority received from the bond principal or actual authority granted by the surety, in the Authorization File. The termination shall contain an indicator as to whose behalf the termination is being undertaken. Bond filers that are acting on behalf of the principal must be granted such authority by the principal and must be able to provide such evidence to Customs, if requested. The Authorization File will provide a data element for a surety administrator to grant authority to a bond filer to terminate bonds on the surety's behalf. A termination filed by a bond filer shall generate a message to the surety administrator advising of the termination.

²⁸ See Sec 113.27(a) & (b). The surety may terminate with fewer than 30 days notice if it provides cause. It is likely that an automated system would not be able to determine whether or not the cause is justified, so a surety wishing to reduce the notice period to fewer than 30 days would need to file a paper termination.

²⁹ If the principal is an ACE portal account then this notifications must be done electronically if no prior notice have been given, otherwise a paper notification must be sent.

Similarly, the principal's account may restrict what Customs brokers may act on behalf of the principal to file or terminate bonds. The System must confirm whether such a restriction is in place, and if so, whether the broker filing the termination is authorized.

The System must verify that the termination is timely, based on the party requesting termination, and accept or reject the termination with a message back to the termination filer and the surety administrator, if not the termination filer, which confirms the termination date. If the principal is a portal account, then it should also receive the notice of the termination approval³⁰. Once accepted, a termination will not be subject to rescission by the surety administrator or bond filer.

Many times a bond is terminated in order for a new bond to be filed. This may become necessary to change the bond amount, or add or remove a principal. Under current practices, when the same surety is filing the new bond, Customs has not enforced the strict time period requirement for filing the notice of termination.³¹ Therefore, the System shall include a "re-write" function when a new bond is being filed with the same surety. The termination and the new bond information would be contained in the same message and the new effective date could be as few as one business day after filing.

To facilitate the replacement of bonds Customs shall provide a procedure to accept terminations with a notice period that is shorter than the regulatory notification period.³²

Bond Filer Authorization File

The Bond Filer Authorization File serves as the basis for Customs' acceptance of any transaction by a bond filer. The file evidences the surety's agreement to accept the filing of a bond, filing of a rider, or submission of a bond termination by an ACE account. This acknowledgement creates the electronic signature of the bond by the surety.

The content of the Authorization File contains trade sensitive information from the surety and bond filer, accordingly Customs must establish proper safeguards to ensure that such information is protected from unnecessary and improper access and disclosure. Only the surety administrator will maintain this file, and as a security measure only certain authorized Customs personnel shall be granted view access to the authorization file and its log file.

³⁰ This notice would be for information purposes only and would not relieve a surety terminating the bond any of its responsibilities under section 113.27.

³¹ In these instances advance notice of termination to Customs is not necessary as the change in coverage is generated by a request from the principal and expedited filing may be needed to insure import or other Customs transactions are properly bonded.

³² This may be achieved by submitting to the appropriate Customs officials a paper termination, which would include the request for a specific termination date along with an explanation. If Customs agrees to permit that date, they would input the termination.

The structure of the file will allow for data elements that permit blanket and specific bond filing authority. The System shall accept any bond from a filer, provided the bond amount is less than or equal to the authority granted for the specific bond type filed. The file shall be structured to permit the surety administrator to grant specific authority for filing a specific bond not covered under the filer's blanket authority. For each bond filer, the surety administrator shall have the ability to limit the bond types, as well as the bond amounts.

For each unique combination of surety code and ACE account id an authorization for each bond type can be provided. The bond type will be indicated by the activity code for CF 301 bonds. The surety administrator will, for each account, indicate the maximum bond amount for each bond type the surety will accept from that account without specific approval. Further, this authority will be specified for both single transaction and continuous bonds. A limit of "0" or no entry in the file will represent no authority for that type of bond.

Single transaction bond authorizations for activity code 1 bonds will be broken down into separate authorizations for entries for FDA restricted merchandise, Quota/Visa restricted merchandise, merchandise subject to antidumping or countervailing duty, merchandise entered under Temporary Importation (TIB), and all others merchandise.³³ The System will, based on the entry information available when the bond is submitted, use the appropriate authorization limit for verification. Once the bond is accepted any changes to the entry between release and summary that would affect which authorization would apply will not affect the validity of the bond. However, if a replacement bond were submitted the new authorization limit would apply to the replacement bond.

Bonds filers shall be identified by ACE account number or by filer code. As an option the surety administrator may limit its authorization to all offices of a filer in a specific port by providing a filer code and port code. Further, by providing the filer code, port code and office number the surety may limit its authorization to a bond filer's specific office.

Bond riders, like the bond, require the acknowledgment by both the principal and the surety. A Yes/No type data element will be used to advise Customs of its willingness to accept riders filed by an account for each specific rider type, as described above. Change riders and coverage enhancement riders will be accounted for separately.

A Yes/No type data element must also be provided to grant authority to a filer to terminate bonds and is not dependent on bond type or bond amount.

³³ Customs must, at the time of release, be able determine which category the entry will fall to insure the proper authorization limit is used. The entry type may be used to determine if limits for anti-dumping, countervailing duty, or temporary importation apply. Customs will have to develop a system, based on HTS number, to determine merchandise subject to FDA and Quota/Visa restrictions. Customs will also required this information for bond adequacy calculations.

The following table is an example of the approval matrix that a surety might use for an account.³⁴

Bond Type / Activity	Continuous or Term	Single Transaction	Single Transaction FDA	Single Transaction Quota/Visa	Single Transaction ADD/CVD	Single Transaction TIB
1	\$50,000	\$200,000	\$100,000	\$100,000	\$50,000	\$300,000
1A	\$50,000	\$100,000				
2	\$0					
3	\$0	\$50,000				
3A	\$0					
4	\$0					
5	\$0					
6		\$0				
7		\$0				
8		\$0				
9		\$0				
10		\$0				
11	\$50,000					
12	\$25,000					
Change Coverage	YES					
Terminate	NO					
	YES					

The file must also provide the capability to grant specific authority for over-limit bonds, either single transaction or continuous. For single transaction bonds this specific authority can be given by specifying an entry number, importer number and a maximum bond amount; or by specifying an importer number, a maximum per bond dollar amount, bond type, and a date period³⁵.

For continuous bonds, indicating an importer number, bond type, and maximum bond amount will denote specific authority. Only one bond may be approved for each specific authorization record. After a bond is submitted and a bond authorization record is used to accept the bond, that record cannot be used to accept another bond. After the authorization record is used to accept a bond, it shall be updated with the bond number or the entry number associated with the bond. Further, if a bond has co-principals, a specific authorization will be needed for each distinct legal entity.³⁶ If there is not

³⁴ The shaded areas in the table represent combinations of bond types and bond activity codes that are not applicable or not permitted by Customs.

³⁵ This type of authority will permit a surety to authorize all bonds for a specific importer, within a specific per bond amount, which is submitted in the date period, be accepted. This could be used when Customs requires additional bonding such as softwood lumber CVD, or the steel anti-dumping when an import may need a large number of single transaction bonds.

³⁶ Since bond users are not distinct legal entities, there will be no need to establish, or verify, an authorization record for any bond user identified on a bond.

specific authorization for each principal the entire bond shall be rejected with an appropriated message.

Each specific authority record shall include an expiration date so authorities will have some finality if the bond is not filed. The System shall not accept any bond based on any authorization after its expiration date.

The System shall also permit the surety administrator to cancel or modify any authorization effective immediately upon its receipt by Customs. Any message to add, modify or cancel authorization shall be acknowledged by a return message, which shall include the requested change and a list of all current authorizations for that account.

Because these authorities will change, the System must track all changes with the date of that change and save in a history file.

Reinsurance³⁷

The Treasury Department must approve a surety before the government may accept bonds from it. Treasury Department Circular 570 lists all approved surety companies, together with the maximum amount of any single bond that may be accepted from that surety. A surety may increase this limit by obtaining reinsurance from another surety approved on Circular 570. A reinsurance company agrees to pay any default by the direct writing surety, up to the limit set forth in the reinsuring agreement it has with the direct writing surety.

There are two type of reinsurance: treaty and facilitative. Treaty reinsurance is a blanket reinsurance, which applies to all bonds written by the direct writing surety for some specified time period. Facilitative reinsurance is provided on a bond-by-bond basis. With each bond, a Form 275, signed by the direct writing surety and the reinsurance surety, must be included.

The System must separately save the Circular 570 bond limit and any additional treaty reinsurance. The System shall retain the reinsurance limit, surety providing the reinsurance and the period of the reinsurance. The System must also keep a historical record of all the reinsurance agreements. Customs officials must be able to maintain this information when provided by the Treasury Department.³⁸ Because facilitative reinsurance is very rare in Customs bonds and the reinsurance companies are unlikely to be part of the eBond System, it would not be cost effective to provide an eBond solution for bonds filed with facilitative reinsurance. These types of bonds would be filed as a paper bond. The System would permit Customs to enter the bond information including the reinsurance surety and their reinsurance limit.

³⁷ For additional information regarding reinsurance please see Appendix A.

³⁸ Customs and the eCP may wish to explore if there is some systemic solution to obtaining this information from Treasury.

Queries & Downloads

The System must permit principals, sureties and bond filers to query bond information; however, the information available will depend on the account type.

Importers and other authorized users shall have ability to view the complete information about all continuous bonds, whether current or terminated, that are related to their account, including the identity of all co-principals, users and riders. This shall be available through the importer's account portal.

Surety administrators and surety accounts shall have the ability to view the complete information about all continuous bonds and associated bond application information, whether current or terminated, that are related to that surety, including all principals and their addresses, users, their current address (from the account file), riders and the bond change log. This information shall be accessed by either the Customs assigned bond number or importer number. Further, the surety administrator or the surety account shall have the ability to receive information on all single transactions bonds filed. This query shall be by importer number or entry number. Queries by entry number shall include all bonds covered by the entry whether single transaction or continuous. These queries shall be available through the surety administrator's account portal or systemically.

Bond filers shall also have the ability to request complete bond information and associated bond application information, for continuous bonds filed by that filer. These requests would be by Customs assigned bond number or importer number. Bond filers shall also be able to view single entry bond information, filed by them, by entry number or importer number. These queries shall be available through the filer's account portal or systemically.

Customs shall also provide a mechanism where by a bond principal may authorize a surety administrator, potential bond filer or other third party to view their bond data. The bond principal, or its representative, may authorize this as a function in their portal account or by giving written authorization. The written authorization may then be provided to Customs³⁹ who will then open access to the third party.

There shall also be the ability to obtain the account name, address and contact information from the System by filer codes or account ID.

Surety administrators shall have the ability to systemically request a complete download of information for all its continuous bonds. This information must include the bond's amount; effective date; termination date (if any); port bond filed; and the importer number, name, bond address, effective date and termination date (if any) of all users, the bond signer's name and social security number (if a paper filed bond) or the filer's

³⁹For consistency and ease of the trade, Customs should designation one central point to handle these requests.

account number for eBonds; and effective and termination dates of any coverage enhancement riders.

Non-eBond sureties shall be given the ability to request an electronic download of their bond information on an ad hoc basis or to designate an ACE account to receive this data on an ad hoc or periodic basis.

Surety administrators shall also have query capabilities of the Bond Authorization File. This shall include queries by Account ID or filer code, or all accounts of the blanket authorizations and by account id, open and/or closed and date range for specific, over-limits authorizations including all data elements. These queries shall be available through the account's portal or systemically.

Bond filers shall have the ability to view their own authorizations, both blanket and specific authorizations through their account portal. This must also include the ability to see a history of changes made to their authorities.

Monitoring for Bond Sufficiency

Bond sufficiency edits are performed during the bond approval process and insufficient bonds would be rejected at that time. Customs shall also develop and implement methodology for identifying any continuous bonds that are insufficient for securing future transactions. The process and logic for periodic reviews of bond sufficiency may be addressed by another module under ACE. Automated checks for sufficiency would be conducted periodically. Additionally, a decision by a port director that a bond may not be sufficient would also trigger a sufficiency review. When a bond is deemed insufficient, all reasons for the insufficiency shall be adequately explained in the notice Customs sends to the principal, surety, and bond filer associated with the bond. The bond should be "tagged" as insufficient and would not be available for use after a reasonable notice period has lapsed (generally 60 days).

Electronic Notifications

All notification generated by the System, to the extent possible, shall be electronic and shall contain sufficient detail in order that the recipient will be able to identify the specific transaction and the nature of, or reason for, the notice.

Throughout this document, we have identified various situations, which would generate a notice. The following summarizes those situations where notice should be provided by the System:

- Approval of the filing of a bond, bond rider, or bond termination: The approval message shall include a re-transmission of all the submitted data along with the name and address for each principal, from the account file, and any approval data

elements, such as the Customs-Assigned number for continuous CF301 bonds. Such notice shall be provided to the surety administrator, bond filer, bond principal (if they maintain an account portal), and other notify parties identified.

- Rejection of the filing of a bond, bond rider, or bond termination: The rejection message shall include a re-transmission of all the submitted data along with a description of the reason(s) for the rejection of the filing. Such notice shall be provided to the party that initiated the filing.
- Notice of voiding of, or changes to, a bond: The voiding or changing of a bond previously approved by the System shall generate a notice that is provided to the surety administrator, bond filer, and other notify parties identified. The notice shall include sufficient information details that adequately identify the activity that occurred, as well as the entry and bond involved.
- Establishing, changing, or revoking authorization in the Authorization File: The system shall confirm the approval or rejection of all activity that creates, changes, or revokes information in this file. Such confirmation shall be provided to the surety administrator.
- Determinations by Customs that a bond is considered to be insufficient for securing future transactions. The system shall provide electronic notice to those parties to the bond capable of receiving such notice, and shall provide adequate notice (i.e. e-mail, fax, or regular mail) for all others.
- The acceptance of a superseding or substitution bond shall generate notice to the proper parties to the transaction as to what has occurred. Note that there could be multiple surety administrators involved in these scenarios.

Communication

The System must work on a system-to-system, transactional basis. This secure link between the surety administrator and Customs must provide for the passing of unsolicited data back to the surety administrator. Because many of the queries and downloads described above are a result of automated processes of the surety administrator or bond filer, the System must provide for these functions on a transaction basis.⁴⁰

Further, to accommodate the requirements for notifying the surety administrator when a bond is filed and REV-008, when Customs will be sending downloads to the surety; there must be a single point of communication between Customs and each surety administrator. The surety administrator shall also be able to specify, via its account profile, if it wishes to receive the bond notification messages immediately or batched daily, weekly or monthly.

⁴⁰ These transmissions must be permitted via multiple forms of communication such as MQ, the Internet or other means provided by the ACE system.

APPENDIX A

CUSTOMS SURETY BONDS AND REINSURANCE

The following is an overview of reinsurance as it applies to U.S. Customs bonds and is provided as background to the reinsurance portion of the eBond requirements document.

Background

Surety Bond Defined

Surety bonds are three-party instruments by which one party (the surety) guarantees or promises a second party (the Obligee) the successful performance of an obligation by a third party (the Principal).

In the custom bond transaction, the Obligee is the United States of America (Customs) and the Principal is generally the importer or a licensed custom broker.

Reinsurance Defined

Reinsurance may be defined as a form of insurance whereby another insurer (the Reinsurer) insures “the primary” insurer (the Reinsured). The Reinsured is often referred to as being “Primary” since it has the primary responsibility for payment of the loss to the Obligee.

In the custom bond transaction, the Primary Surety is the company issuing the bond and the Obligee is Customs. The Primary Surety may have one or more Reinsurers.

Reinsurance Contracts

The contract between the Reinsured and Reinsurer is a private commercial transaction, the terms of which can be extremely complicated. The contracts are generally referred to as a “Treaty.” While treaties issued by various Reinsurers may have similar terms and conditions, there are no standard or uniform forms required by law or regulation. Many are manuscripted based upon orally agreed terms by the parties and are formed to meet the specific needs of the Reinsured.

Authorized Sureties/Reinsurers

The United States Department of the Treasury issues an annual listing (Circular 570) of surety companies and reinsurance companies who have been authorized to issue surety

bonds on which the U.S. Government or its Agencies is named as Obligee. The circular also establishes a limit (the Treasury Limit) on any single obligation (bond amount) a surety or reinsurer may issue. A copy of the circular may be obtained at www.fms.treas.gov/c570.

The Custom Bond Transaction

- Where the Penalty of the Bond is Equal to or Less Than the Surety's Treasury Limit

The only required documents to be filed to support the entry (ies) are:

1. CF 301 Bond Form
2. CF 301 Application
3. CF 5106

- **Where the Penalty of the Bond is in Excess of the Surety's Treasury Limit**

The limits published in the Circular 570 are on a *per bond basis*. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Treasury Limit, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 C.F.R §§ 223.10 and 223.11). When bonds written in excess of the Treasury Limit are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. Note (b), Circular 570.

Therefore, in order for the filing surety's bond to be accepted, the surety must provide **ONE** of the following documents in addition to the documents listed above:

1. Custom's Standard Form 275 "Reinsurance Agreement in Favor of the United States"
2. Corporate Sureties Agreement for Limitation of Liability-19CFR 113.37 (f)
3. (Copies of the agreements are attached.)

Reinsurance Agreement In Favor of the United States – Form 275

Since the reinsurance contract is a private commercial transaction between the Reinsured and Reinsurer, the Reinsured is the only party with a direct right of recovery against the Reinsurer. There is no direct right of recovery against the Reinsurer by the Obligee – **unless such right is provided by a separate agreement between the Reinsured, the Reinsurer and the third party.** And, the extent of the rights to recovery

will be governed by the terms of the separate agreement. **Form 275 is such a separate agreement.**

Corporate Sureties Agreement for Limitation of Liability – 19 CFR

113.37 (f)

A filing surety also has the option of requesting another surety listed on Circular 570 to join with it as a “Co-Surety” on the bond, utilizing this form. It could also request its Reinsurer to become co-surety as long as the Reinsurer holds a Certificate of Authority as an acceptable surety. The combined Treasury Limits of the sureties as set forth in Circular 570 must be equal to or in excess of the bond penalty. In addition, each surety’s Limitation of Liability must be **equal to or less than** its Treasury Limit.

This Agreement is “joint and several” and Customs can make demand against all co-sureties. Should one of the sureties be unable to respond, the others would be responsible to make payment, up to their Limitation of Liability.

As an example:

Bond Penalty = \$4,000,000

Co-Surety A’s Limitation of Liability is \$1,000,000

Co-Surety B’s Limitation of Liability is \$3,000,000

1. If Customs makes demand for \$700,000 and either Surety A or Surety B is unable to respond, the other will be required to pay the entire \$700,000.
2. If Customs makes demand for \$4,000,000 and Surety A is unable to respond; Surety B will be required to respond up to its Limitation of Liability of \$3,000,000. Customs is deficient by \$1,000,000.
3. If Customs makes demand for \$4,000,000 and Surety B is unable to respond, Surety A will be required to respond up to its Limitation of Liability of \$1,000,000. Customs is deficient by \$3,000,000.

APPENDIX B eBOND REGULATORY DRAFT

February 27, 2004 v.3

These changes reflect the response to the comments from J. Baskin

Proposed Changes to Customs Regulations for e-Bond System

1. Amend the first sentence of Section 113.00 Scope, to state as follows:

This part sets forth the general requirements applicable to paper and electronic bonds.

2. Add New Subpart to Part 113, Perhaps Subpart H (before Appendix to Part 113)

Subpart ___ - Electronic Bond (e-Bond) System

§ 113.80 Applicability

This subpart sets forth general requirements for the filing of Customs bonds (e-Bonds) through the Customs Automated Commercial Environment (ACE). Use of the e-Bond system is voluntary and optional on behalf of the surety or filer.

Comment [AP1]: Deleted references to rights and obligations of parties. **Question:** Is it intended that the e-Bond system will be voluntary and optional?

§ 113.81 Definitions

(a) *ACE.* “ACE” means the Automated Commercial Environment, as defined in § 143.32(____) of this chapter.

(b) *Bond filer.* “Bond filer” means any principal, surety, or agents thereof, as defined in subpart D of this Section, which are eligible to file an e-Bond as defined in this subsection.

(c) *Electronic authorization file.* | “Electronic authorization file” means the table maintained electronically in ACE by the surety that identifies filers authorized by the surety and defines the bond limits established by the participating surety for e-Bonds transmitted by bond filers. The electronic authorization file is linked to an electronic agent, as defined in subsection (g) to

Comment [AP2]: Through its electronic agent (computer program), the surety verifies that a transmission with within the surety's established authorization limits. The surety approves the bonds, while it up to Customs to “accept” the bonds. We believe the provision is clear.

this subpart, which verifies that a transmission is within the surety’s established authorization limits for authorized bond filers and can also approve bonds transmitted in excess of those established limits.

(d) *Bond filer eligibility.* Bond filer eligibility is established when the electronic authorization file identifies the authorized bond filer and verifies that the transmission is within the bond limits established by the surety.

(e) *Electronic data message.* “Electronic data message” means the electronic transmission of e-Bond data via ACE by a bond filer to Customs.

(f) *e-Bond.* An “e-Bond” means an electronic version of a Customs bond, defined in §113.4(a) of this chapter, which is filed through ACE by an eligible bond filer.

(g) *e-Bond signature.* “e-Bond signature” means the electronic process associated with the transmission of the electronic data message, as defined in this subsection. An e-Bond is adequately “signed” if a method is used to identify the signatories and to indicate their approval of the information contained in the electronic data message, including the electronic approval process referenced in this Section.

Comment [AP3]: The purpose of (b) [deleted in this markup version] was to ensure the electronic method used to identify the signatories is as reliable as in the paper bond context; we agree that the concept need not be set forth in the proposed regulations.

An e-Bond signature meeting these requirements will satisfy the witness requirements of § 113.22 of this chapter.

(h) *Electronic agent.* “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performance in whole or in part without review or action by an individual at the time of the action or response.

(i) *Surety.* For purposes of this subpart, the “surety” is the actual surety as defined by sections 113.35, 113.36 and 113.37 of this chapter, or its designated agent or representative.

§ 113.82 Bond Acceptance

(a) An eligible bond filer, as defined in subsections 113.81(d), 113.85 and 113.86 of this Section, may submit e-Bonds to satisfy any Customs bond required by law or regulation.

(b) An e-Bond becomes effective when:

- (1) Customs receives an electronic data message from a bond filer; and
- (2) Customs has transmitted an acceptance electronic data message to the bond filer and surety.

(c) The electronic data message from the bond filer shall constitute the e-Bond signature of the e-Bond. This electronic message, together with Customs' acceptance, shall constitute evidence of the actual bond agreement between the parties.

(d) In all cases, except when the bond filer is the actual principal or the surety, the bond filer must have received authorization to execute the e-Bond by a power of attorney.

Comment [AP4]: The deleted passages below addressed the concern of the surety's that bond filers who are not the surety or principal should have power of attorney to execute e-Bonds. This was intended to prevent principals from denying bond liability (based on the statute of frauds) by claiming that their agent did not have authority to execute e-Bonds.

§ 113.83 Riders

(a) A rider, as defined in section 113.24 of this chapter, may be transmitted via ACE by an electronic data message and shall meet all the requirements of for acceptance of a bond as defined in section 113.82(c).

(b) The submission of a rider under this subsection may apply to any bond filed under this chapter.

§ 113.84 Terminations

(a) Any bond filed under this subsection may be terminated by transmission of an electronic data message.

(b) Termination by principal. A termination transmitted by a bond filer in accordance with section 113.84(a) must indicate that the termination is being submitted on behalf of a principal and is subject to the requirements of section 113.27(a).

(c) Termination by surety. A termination transmitted by a bond filer in accordance with section 113.84(a) must indicate that the termination is being submitted on behalf of a surety and is subject to the requirement of section 113.27(b).

(d) The transmission of a termination under this subsection may apply to any bond filed under this chapter.

Comment [AP5]: We believe that proposed Section 113.81(c) adequately addresses this issue and thus we do not oppose the deletion.

§ 113.85 Participation by Sureties

To participate in the e-Bond System a surety must agree to be bound by the bonds and riders filed in accordance with this subpart and must be qualified to use the features of ACE and meet any other eligibility requirements set forth by Customs.

§ 113.86 Participation by Bond Filers

To be eligible to file e-Bonds, riders or terminations as prescribed in this subpart, a bond filer must be qualified to use the features of ACE and meet any other eligibility requirements set forth by Customs.

§ 141.32 Form of Power of Attorney

Customs Form 5291 may be used for giving power of attorney to transact Customs business. If a Customs power of attorney is not on Customs Form 5291, it shall be either a general power of attorney with unlimited authority or a limited power of attorney as explicit in its terms and executed in the same manner as a Customs Form 5291. If the power of attorney is of limited authority, it must include specific authority to execute an electronic bond as defined in section 113.____ (e). The following is an example of an acceptable power of attorney with unlimited authority:

Comment [AP6]: To eliminate any uncertainty as to whether a power of attorney authorizes a broker or other agent to execute e-Bonds on behalf of a principal, the following change to Section 141.32 is proposed.

Other Possible Changes:

1. Section 113.4: Customs bonds. Include e-Bond under the definition of “Customs bond”. Changes are in **bold type**:

“(a) All bonds required to be given under the Customs laws or regulations, **including e-Bonds defined in Subpart ____,** shall be known as Customs bonds.”

2. Section 113.23 Changes made on the bond.

An electronic message protocol similar to the filing of the bond would be used to amend or modify bonds. The existing Section 113.23 refers to pre- and post-signing timetables for changes made to a bond. However, under the e-Bond system, once the electronic data message is sent, the bond is “signed” and “approved” by Customs. Therefore, changes or revisions to a standard Customs e-Bond could be accomplished either (1) at the time of initial transmission of the electronic data message, with special prompt for Customs’ approval; or (2) after the electronic data message is sent, through a special electronic message specifically intended to replace or supercede the existing e-Bond. Under the current regulations, Customs’ approval and acceptance of a post-signature amended or modified bond would not be automatic, but require separate approval.

* * * * *

Responses to Comments Received from E-Bond Subcommittee Members

1. Comments from Harvey Isaacs. I disagree that the proposed regulations are “unnecessary” and can be handled in “CATAIR” instructions. We need to keep in mind that the e-Bond system is voluntary and optional, and some will continue to use the existing paper system. Regulatory change will ensure that the procedures for both systems are clearly understood and the rights and responsibilities of the parties are explained.

The electronic environment under which e-Bonds will be transmitted differs from the existing paper environment in significant ways, requiring regulatory changes. In the paper environment, there are numerous requirements and procedures that will be accomplished differently in the e-Bond environment. For example, traditional ink signatures are dispensed with; what constitutes a bond “filing” is not the same as with a paper bond; the method of terminating a bond, or adding a rider, will change; how a bond is “accepted” will change; eligibility requirements

for “participation” must be established. A number of new terms must be defined to avoid possible confusion. Finally, regulatory change may be necessary to ensure that participants understand their rights and responsibilities in an environment where written signatures and paper filings are eliminated (e.g. statute of frauds issues). Finally, Customs recognized that particular regulatory changes were necessary for implementation of Electronic Entry Filing under § 143.31; the adoption of the e-Bond system is a significant enough change to merit regulatory guidance, particularly since it will continue (for now) to exist side-by-side with the paper bond environment.

2. Comments from Bruce Haskell. I agree with the great majority of Bruce’s comments and additions, and most have been incorporated into the draft. One point is worth noting. In § 113.81(c), defining the “electronic authorization file”, Bruce substituted the word “table” for “file”. I included this change but note that there may be potential for confusion. If the “file” means the “table”, why use two different words?

I have made a number of minor alterations to Bruce’s comments, most of which are contained in the “comments” column in the marked-up draft. One notable change is to substitute the “transmission” for “submission” in a number of instances, in order to minimize new terminology and avoid potential confusion.

3. Comments from ASA. I agree with the substance of the added sentence in the Applicability section (proposed 113.80), discussing the legal rights and obligations of the parties. On the other hand, Customs generally does not put such statements into the regulations, and perhaps this is best left for legislative history.

Additionally, in § 113.81(f), concerning e-Bond signatures, I disagree with the deletion of the phrase “electronic message” and the addition of the phrase “whereby the authorized filer transmits the e-Bond”. It is enough to say the e-Bond signature is the transmission of the electronic data message, as defined in the subsection. The idea here is to keep the terminology simple and consistent. The transmission of the electronic data message is the transmission of the e-Bond, and that transmission also constitutes the signature (so long as the “signature” meets the requirement of proposed § 113.81(f) (1) & (2)).

Appendix C – eBond Flowchart

