ROANOKE TRADE

October 18, 2010

U.S. CUSTOMS AND BORDER PROTECTION
ATTN: Tracey Denning
Regulations and Rulings / Office of International Trade
799 9th STREET N.W., 7TH FLOOR
WASHINGTON, DC 20229-1177

RE: Comments regarding CBP Form 301 / CBP Form 5297

Dear Ms. Denning:

In response to the August 17, 2010, Federal Register Notice, Roanoke Trade Services provides these written comments. Roanoke Trade Services is an insurance broker specializing in insurance and surety products for the international trade community, including Customs bonds.

1. The need to amend the CBP Form 301 for additional Activity Codes is a solution seeking a problem. Since the adoption of the Form 301 just over 25 years ago, CBP has found new but very infrequent situations requiring a bond that could not be accomplished within the original 12 activity codes shown on the CBP Form 301. As of May 31, 2010, CBP reported[1] that it had 165,706 continuous bonds in force (or at least recorded in the database as being in force – there could be some continuous bonds at the ports that are not input). Of these, 71 involved activity codes not currently available on the 301. This represents 0.043%, or roughly 9 of every 20,000 continuous bonds in effect. Instead of a form change, CBP must dedicate its resources to implementing eBond. While eBond will not entirely eliminate the need for a paper bond form, it is very likely the relatively small group of sureties that write nearly all Customs bonds will adopt the eBond for almost every bond filed with CBP. Whatever time burden CBP presently spends on reviewing and validating all bonds will be drastically reduced because nearly all of the validation work will be done electronically in an automated manner, for nearly every bond CBP approves. This means an automated review of hundreds of thousands of bonds each year.

Additionally, CBP is presently undertaking a significant rewriting of Part 113. It is possible that such new language may require some changes to the language, text, instructions, etc., on the Form 301 or Form 5297. To make changes now, only to do so again when the rewrite of Part 113 is promulgated, is a waste of time and money, especially since all indications are that implementing changes to Part 113 is a near term event that may occur within the next year.

2. Nearly all surety companies privately print the bond forms they utilize. They do not rely on free versions of the document provided by CBP and/or the Government Printing Office. The costs to sureties to modify the bond forms they currently have distributed throughout their distribution network, a network that involves thousands of office locations, can be very significant and can easily run into tens of thousands of dollars. Further, some CHBs and sureties have software programs that automatically drop the bond information on a blank or pre-printed form (pin-fed printing, laser printing, etc.) which would require new print calibration and programming modifications. This programming will take time to complete. If there are new activities that need to be included on a standardized bond form, perhaps CBP should create a second bond form number (*e.g.*, the CBP Form 301-A, or Form 302) for these new, infrequently used activities. A new form number would allow for the current form to continue to be used

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[1] This information was provided by CBP's Office of Finance by means of an Excel spreadsheet prior to or in conjunction with the mid-June, 2010, CBP-Surety Executive Committee meeting in Chicago.

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unchanged. However, if CBP insists that there only be one form for any and all activity requiring a bond, we suggest the following:

a. CBP must allow for a reasonable period of time for the present form to continue to be used. This is something it permitted when it changed the CBP Form 7501 document. This phase in period must be no less than one year.

b. Instead of expanding "Section II" on the CBP Form 301 for all the new activities known to date, CBP should use the space currently allocated for Activity Codes 5-10 and replace it with one check box, one free-text fillable space where the user can type in the CBP Regulation or other valid authority covering the bond conditions, and one space for the bond amount. This has the added benefit of accommodating every future bond need without changing the form repeatedly.

3. CBP needs to eliminate the language in Section II stating it's acceptable to combine Activity Codes 1 and 1A. CBP eliminated this choice many years ago when tightening the controls over accelerated drawback claims secured by continuous bonds. CBP should still allow for the combination of codes 3 and 3A.

4. The CBP Form 301, while officially a 2-page document, is for all practical purposes a one-page document. CBP tacitly acknowledges this in U.S. Court of International Trade filings when only the first page of the bond is filed as an exhibit. The second page is reserved for witness authentications (which rarely is necessary by regulation) and overflow of Section III information (again, rarely needed). It is very neat and concise to have the bond principal and surety signatures on the same page as the information and identification of the transaction being secured by the bond. Having it split on separate pages (which could occur if CBP expands Section II for all the additional but infrequently used Activity Codes), can cause confusion and may cause grounds for someone to repudiate his execution. Worse, in an attempt to defraud other parties to a bond, one bond party may be tempted to concatenate the transaction information of one bond page with the signature page of another bond to make it appear the bond is valid. Any changes to the layout of the bond should be made so that the document retains its "one page" look.

5. Because there are certain limited situations where the space on the existing form is not sufficient CBP should create official forms for the continuation of the following information (these continuation sheets would only accompany any bond submission at the time of its filing and would have sufficient information on it to connect it to the Form 301):

a. Section III tradenames and divisions. This would eliminate the need for the overflow on the back page.

b. Co-principals. The Form has room for 2 co-principals however there is no limit in the regulations as to the maximum number.

c. Co-sureties. The current Form has room for 2 co-sureties yet there is no limit on the number of co-sureties on a bond.

CBP has other forms and documents that allow for overflow information, such as the CBP Form 7501, and so should the bond. There would be an indication on the face of the 301 as to the total number of principals and sureties, as is currently done in Section III for tradenames and divisions.

6. The use of the term "Importer Name" in Section III is not accurate. Since a Customs bond can involve non-importation activity, and this section is also used for tradenames or divisions, CBP should call it "Name" (this appears in the column heading and in the "total number of importer names" area).

7. CBP may need to amend the Customs Regulations for new activity codes. Presently, some bond language is found in the Appendix to Part 113. If CBP wants to use the 301 for the ISF Bond, Marine

Terminal Operator, and Intellectual Property Rights Samples, then CBP needs to have CBP regulations that only include the bond conditions. The Form 301 already contains language describing the parties, the bond amount, etc., that would be repeated if the Activity Code check box simply incorporated "Appendix D to Part 113" as the bond conditions. Instead, for the ISF bond obligations, the check box should refer to §113.62(j), §113.63( g), §113.64(e), or §113.73(c).

Where necessary, CBP may need to add to the regulations to codify the bond obligations or agreements found in some bond forms. The bond language of some of the proposed bond activity codes are not found anywhere in the CBP Regulations. The language for the Marine Terminal Operator bond was promulgated by a "Specific Instruction" notice published in the *Customs Bulletin and Decisions*, and it is not found in any part of Title 19, especially Part 113. We are not aware of any official document number or other unique and unambiguous reference to cite for the Miami In-Bond Export Consolidator Bond. The column heading in Section II says the "Activity Name and Customs Regulations in which conditions codified." This language might want to include other official and unambiguous references, such as Treasury/CBP Decisions, Federal Register notices, etc., if that is the only way to reference the bond and its conditions. The success of the CBP Form 301 is found in its simplicity and flexibility to allow for the underlying regulations to be amended without the need to replace the bond. This works only when there is an unambiguous reference to the bond conditions in the CBP regulations or other validly authorized and identifiable document.

8. In various areas in Section II, CBP uses the phrase "Single Entry Only" which may be a carry over from the CBP regulations. This should be changed to "Single Transaction Only" since, in some instances, the matter being bonded involves a transaction with CBP that is not an entry. For example, some court cost seizure bonds involve export shipments, not just importations. Further, this would be in harmony with the "Single Transaction Bond" box in Section I of the bond.

9. Footnotes 8 and 9 discuss the grant of a surety agent's authority using CBP Form 5297. CBP also allows for the electronic filing of the information that otherwise would be contained on Form 5297 via the POA functionality in the Surety view in the ACE Secure Data Portal. This functionality allows a surety to establish, modify, or revoke this grant of authority. The language in Footnotes 8 and 9 should also reference use of the ACE Portal in lieu of filing the paper 5297 document with CBP. Further, the bond Form should refer to the process outlined in the CBP regulations, §113.37 as opposed to the CBP Form 5297 (§113.37 already does that).

Footnote 9 indicates the surety agent's identification number must be his Social Security number. This may change over time and by referring to §113.37 instead of specific language, any change would not require rewriting language or creating a new edition of the Form 301. This language should read, "9. Agent Identification No. shall be in the form provided for in 19 CFR §113.37 as filed on the Corporate Surety Power of Attorney, CBP Form 5297, filed by the surety granting such power of attorney, or as maintained by the surety in its ACE Secure Data Portal."

10. CBP should depart from the use of a Social Security number as the sole means of uniquely identifying the surety's agent. It should adopt another measure, unique to CBP, such as an ACE User ID number, or perhaps a CBP-Assigned number. Continued use of the Social Security number can facilitate identity theft and CBP has an existing and reasonable means to uniquely identify surety agents without relying on the Social Security number. Also, in some instances, a surety's agent may be someone who does not possess a social security number, such as an authorized individual located outside the United States. CBP should not involve itself in the business relationship between a surety and its authorized agents by insisting they have to possess a Social Security number.

To transition away from the use of the Social Security number as the exclusive means to identify a surety agent, CBP would need to modify language in Form 5297, language in §113.37, and review ACE edits.

11. CBP must be clear that any change to the Form 301 will not affect existing bonds in force using the old version(s). Merely changing the form does not mean the principal and surety have to terminate and replace any bond already approved by CBP.

Please contact me with any questions or if there is a need for further clarification with any of the foregoing. Roanoke Trade thanks CBP for the opportunity to provide its comments.

Best regards,
ROANOKE TRADE SERVICES

Matt Zehner

Matthew L. Zehner
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