

**Supporting Statement
Importation Bond Structure (Forms 301 and 5297)
1651-0050**

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Bonds are used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of cargo and conveyances through CBP processing; and to provide legal recourse for the Government for noncompliance with laws and regulations. Any person who is required to post a bond to secure a CBP transaction usually submits the bond on Form 301, Customs Bond, to CBP.

Surety bonds are usually executed by an agent of the surety. The surety company grants authority to the agent via a Corporate Surety Power of Attorney, CBP Form 5297. This power is vested with CBP so that when a bond is filed, the validity of the authority of the agent executing the bond and the name of the surety can be verified to the surety's grant. Bonds are required pursuant to 19 U.S.C.1608, and 1623; 22 U.S.C. 463; 19 CFR Part 113.37 and 113.11.

CBP proposes to revise Form 301 in order to accurately reflect the changes that have occurred with regard to CBP bonds. Specifically, the revised Form 301 will capture the new types of bonds which have been authorized by law and regulation, as well as better harmonize this form with current and future automation system requirements. *Section II* of the Form 301 will be revised to specifically cover continuous activity code bonds for Importer Security Filing, Marine Terminal Operator, and Intellectual Property Rights Samples.

Also, based on public comments that CBP received, CBP also proposes to make the following changes to Form 301:

- 1) Remove the phrase from *Section II* of the form "1a may be checked independently or with 1, and" because these activity codes should not be combined.
- 2) In *Section II* of Form 301, replace the term "Single Entry Bond" with the term "Single Entry Transaction", in each place it appears in order to accommodate transactions that are not entries.

- 3) In *Section III* of Form 301, replace the term “Importer Name” with the Term “Name” to accommodate parties other than importers that use Form 301.
- 4) In *Section III* of Form 301, replace the term “Importer Number”, in each place it appears, with the term “Identification Number” in order to include all the types of filing numbers listed in 19 CFR 24.5.
- 5) Delete the term “Form 5297” in both Footnote 8 and Footnote 9 of Form 301 so that it does not exclude electronic filing of the information.
- 6) Create a continuation sheet for Form 301.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The bond is used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of merchandise through CBP; and to provide legal recourse for the Government for noncompliance with CBP laws. Without these documents, all imported merchandise would have to remain in physical CBP custody until compliance with all applicable laws and regulations and duties and taxes had been determined. This would disrupt the orderly flow of cargo and increase the cost of importing.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The information on Form 5297, Power of Attorney, can be submitted via CBP’s Automated Commercial Environment (ACE). Currently about 90 percent of these forms are submitted electronically.

CBP is planning to automate Form 301 as part of the cargo release function of the Automated Commercial Environment. CBP plans to initiate the automation of bond submission by late 2012 or early 2013. In the interim, CBP is also testing a bond imaging system which will allow submission of the bonds by a scanning system.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the

purposes described in Item 2 above.

This information is not duplicated in any other place or any other form.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

- 6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The importing process would be deterred significantly because these forms allow CBP to physically release imported merchandise to importers and consignees before final determinations on duties and taxes are made.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.5(d)(2).

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Public comments were solicited through two Federal Register notices: a 60-day notice published on August 17, 2010 (Volume 75, Page 50772) on which one comment was received, and a 30-day notice published on November 9, 2010 (Volume 75, Page 68809) on which no comments have been received.

The comment was from Matt Zehner of Roanoke Trade Services, Inc. The comments and CBP response are as follows:

Comment 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.

CBP Response: We agree that use of some of the new activity codes will be used infrequently, however we believe the addition of these codes will help CBP manage the program more efficiently without significant impact on respondents.

Comment 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 and it would be very costly to replace them if CBP comes out with a new form. 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.

CBP Response: We will allow a reasonable time to comply. Also CBP provides a fillable version of Form 301 on its website.

Comment 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.

CBP Response: CBP concurs and will implement this suggestion.

Comment 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. 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 can cause confusion.

CBP Response: We agree that a single page form would be simpler but there is too much information on CBP Form 301 to make it a one page form.

Comment 5: A continuation sheet should be created for CBP Form 301 because the space provided is not sufficient:

CBP Response: CBP concurs and will create a continuation sheet.

Comment 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 trade names or divisions, CBP should call it "Name" instead.

CBP Response: CBP concurs and will make this change.

Comment 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 Importer Security Filing (ISF), Marine Terminal Operator, and Intellectual Property Rights Samples, then CBP needs to have CBP regulations. 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.

CBP Response: CBP concurs with regard to the Miami In-bond Export Consolidator issue and will remove this from the proposed form. Some of the bonds listed by the commenter are in Part 113 of the CBP regulations such as the ISF. 19 CFR 113.1 allows the Agency "by regulation, or specific instruction" to require such bonds or other security considered necessary.

Comment 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.

CBP Response: CBP concurs and will implement this change.

Comment 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.

CBP Response: CBP concurs and will implement this by removing reference to the paper form 5297. CBP substituted comprehensive instructions for the footnotes that are currently on the form.

Comment 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.

CBP Response: CBP concurs and has proposed the use of surety assigned numbers in lieu of Social Security Numbers in a Final Rule which is currently under review.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There is no offer of a monetary or material value for this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

A SORN for this collection was published on December 19, 2008 (Volume 73, Page 77759).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

FORM NUMBER/TITLE	TOTAL ANNUAL BURDEN HOURS	NO. OF RESPONDENTS	NO. OF RESPONSES PER RESPONDENT	TOTAL RESPONSES	TIME PER RESPONSE
5297 Power of Attorney	New: 125 Old: 95,937	New: 500 Old: 383,662	1	New: 500 Old: 383,662	15 minutes (.25 hours)
301 Customs Bond	New: 200,000 Old: 51,659	New: 800,000 Old: 206,588	1	New: 800,000 Old: 206,588	15 minutes (.25 hours)
TOTAL	New: 200,125 Old: 147,596	New: 800,500 Old: 590,250		New: 800,500 Old: 590,250	

Public Cost

The estimated cost to the respondents is \$4,002,500. This is based on the estimated burden hours (200,125) multiplied (x) hourly rate (\$20.00).

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information.

There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

14. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

The estimated annual cost to the Federal Government associated with the review of these records is **\$5,715,570**. This is based on the number of responses (800,500) that must be reviewed (x) the time to review and process each response (.17 hours) = 136,085 hours (x) the average hourly rate (\$42.00)

= \$5,715,570.

15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13.

The burden hours were adjusted due to better estimates by CBP regarding the number of these forms filed. Also, CBP is proposing to revise Form 301 as described in Item #1 of this statement.

16. For collection of information whose results will be published, outline plans for tabulation, and publication.

This information collection will not be published for statistical purposes.

17. If seeking approval to not display the expiration date, explain the reasons displaying the expiration date would be inappropriate.

CBP requests an exception from displaying the expiration date on Form 301. Displaying an expiration date on the Form 301 has the potential of becoming a collections issue for CBP. A surety company may try to raise the expiration date as a defense, i.e., contending that the bond is somehow invalid because it was executed or obligated after that 'expiration date'. This defense may also be utilized solely in connection with interest owed (e.g., interest is not due for the time period after the 'expiration date'). This creates a litigation risk for CBP that should be avoided because of the potential cost. Continuous bonds renew automatically without the submission of additional documentation. As a result, a Form 301 may be actively 'used' for 5, 10, or 20 years after it is first filed. Similarly, it is very likely that CBP collections would regularly occur years after any 'expiration date' printed on that form.

CBP will display the expiration date for OMB approval of this information collection with respect to Form 5297

18. "Certification for Paperwork Reduction Act Submissions."

CBP does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods

No statistical methods were employed.

