

# Department of Homeland Security **Office of Inspector General**

CBP's Management Controls  
over Bonded Facilities





Homeland  
Security

JAN 6 2012

MEMORANDUM FOR: Kevin K. McAleenan  
Acting Assistant Commissioner  
Office of Field Operations  
U.S. Customs and Border Protection

FROM: Anne L. Richards *Anne L. Richards*  
Assistant Inspector General for Audits

SUBJECT: *Final Letter Report: CBP's Management Controls over Bonded Facilities*

Attached for your information is our final letter report, *CBP's Management Controls over Bonded Facilities*. We incorporated the formal comments from the U.S. Customs and Border Protection's (CBP) Office of Internal Affairs in the report.

The report contains four recommendations aimed at improving the vetting of bonded facility employees. Your office concurred with all four of the report's recommendations and intends to use the Global Enrollment System to standardize and improve vetting of bonded facility employees. Recommendations 1, 3, and 4 will remain open and unresolved until we receive documentation that CBP has implemented the Global Enrollment System and the system is meeting the intent of the recommendations. Recommendation 2 is open and resolved, and will be closed once we receive documentation that it has been implemented. Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. The report will be posted on our website.

Should you have any questions, please call me, or your staff may contact Mark Bell, Deputy Assistant Inspector General for Audits, at (202) 254-4100.

Attachment

## **Background**

U.S. Customs and Border Protection (CBP) is responsible for cargo security, including the accountability of the transfer to and storage of cargo at bonded facilities. A CBP-approved bonded facility is a privately owned and operated building in which merchandise may be stored or manipulated without payment of duty for up to 5 years from the date of importation. To establish a bonded facility, a proprietor must file an application with the local CBP port director. According to CBP's guidance (Treasury Directive 72-56), "Operators of cargo handling facilities should conduct employment screening of prospective employees."

CBP seaport threat assessments have identified the potential for terrorist exploitation, smuggling, and internal conspiracies at bonded facilities. Between 2005 and 2008, CBP and U.S. Immigration and Customs Enforcement's (ICE) joint Fraud Investigative Strike Teams conducted unannounced investigations of bonded facilities, resulting in the detention of more than 350 undocumented individuals and the assessment of more than 170 liquidated damages claims with an estimated value of \$6.3 million. These investigations also found that the bonded facilities employed workers with outstanding arrest warrants.

The Code of Federal Regulations (CFR)<sup>1</sup> grants CBP port directors the authority to require background checks on bonded facility employees. Background checks are an accepted management control used by government and private industry to ensure that employees do not pose a security risk. At a minimum, an effective background check should (1) authenticate employees and (2) compare employee background information against agency-accepted criteria of disqualifying offenses.

Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Control*, requires agencies to establish and maintain internal controls. The objective of this audit was to determine whether CBP has effective management controls to ensure that employees at bonded facilities do not pose a security risk. We reviewed the effectiveness of CBP's management controls over background checks at bonded facilities at five ports.

## **Results of Audit**

CBP does not have effective management controls to ensure that employees do not pose a security risk at bonded facilities. CBP has not issued national requirements for background checks on employees of bonded facilities and does not ensure that port directors have management controls over background checks at bonded facilities. As a result, background checks are inconsistent and often ineffective. This may put bonded facilities at greater risk for terrorist exploitation, smuggling, and internal conspiracies.

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<sup>1</sup> 19 CFR §19.2(f), "As a condition of approval of the application, the port director may order an inquiry by a Customs officer into the qualification, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references) . . . ."

Additionally, although CBP relies on ICE to conduct its background checks, ICE does not have a national standard for how background checks must be conducted, does not provide criteria for disqualifying criminal offenses, and does not always keep records of investigation for employees who were screened.

Because CBP does not provide requirements or minimum standards for conducting background checks, the quality and effectiveness of employee background checks vary from port to port. Specifically—

- CBP does not require bonded facilities to perform background checks on employees prior to hiring or on a periodic basis.
- CBP does not require record keeping for background checks performed.
- CBP has not defined the types of criminal offenses that would disqualify a job applicant from employment at a bonded facility.
- CBP does not enable port directors to authenticate the identity of employees using fingerprint analysis.
- CBP has not provided guidance on what law enforcement systems must be used to vet employees. Thus, ports run background checks against different law enforcement systems, with a wide variance of results.
- CBP does not ensure that all ports assess the background check process or results as part of its internal compliance reviews.

CBP's record keeping for bonded facility background checks was inconsistent and incomplete among the ports we visited. We identified 41 bonded facilities in these port locations for our review, requested a current list of employees, and received 777 names. Using CBP's files, we attempted to verify whether all of those bonded facility employees had received a background check. However, due to the incomplete and inconsistent information, we were unable to determine if employees at the bonded facilities received a background check or if applicants for employment were not hired because of a criminal background.

To better understand the level of risk that unscreened employees may pose to the port and other employees, we selected 203 employees currently working at the 41 bonded facilities. Our team worked with Office of Inspector General (OIG) investigators to compare the names, dates of birth, and Social Security numbers with information in a Federal Bureau of Investigation (FBI) database. Twenty-four employees had a prior record for offenses ranging from minor violations to serious violations such as drug trafficking, attempted murder, alien smuggling, kidnapping, possession of stolen vehicles, possession of weapons, and aggravated assault and battery. Because neither CBP nor ICE has standard policies and procedures for background checks, including criteria for a disqualifying criminal offense, these individuals were employed at the bonded facilities during the time of our review.

According to OIG investigators, organizations should include a 10-point fingerprint analysis to authenticate a background check. However, CBP suspended the practice of fingerprint analysis in 2007 because of funding limitations. Despite this suspension, two of the ports we tested continue to collect fingerprint cards from bonded facilities. A background check without fingerprint analysis will not guard against individuals with aliases, same dates of birth, or similar Social Security numbers.

Law enforcement authorities said an effective background should include checks of the National Crime Information Center (NCIC). An NCIC check would also reveal whether the individual is on the FBI's terrorist watch list. We noted during our review that port staff did not always know what type of information a standard NCIC check includes. Some ports were unaware that the NCIC included a check against the Known or Appropriately Suspected Terrorist File and the Immigration Violator File.

One of the primary mechanisms for oversight of bonded facilities is CBP-scheduled compliance reviews. Although CBP conducts compliance reviews to verify transactions, records, procedures, conditions, and inventory, these reviews do not verify whether employee lists were accurate and complete and whether background checks were conducted. During our review, we noted discrepancies between the current employee lists retained by CBP's Entry Department and CBP's Compliance team.

We did identify a potential best practice at the port of Newark, where CBP's port compliance team recently updated its procedures. Before conducting a compliance review, the team sends a letter to the bonded facility to request the current employee list. The port's Entry Department also sends reminders to the bonded facility to submit updated employee lists to CBP as required by federal regulations. This practice ensures that CBP is aware of who is working at its bonded facilities so that background checks may be conducted on new employees.

CBP acknowledged that the bonded facility employee screening process can be improved and has begun a pilot program called the Global Enrollment System (GES) that leverages an existing vetting system within its trusted traveler programs. CBP has not yet issued final guidance on how GES will be used. CBP needs to establish clear policies and procedures on how to conduct background checks of bonded facility employees and how the ports can provide adequate implementation and oversight. Consistent hiring policies and procedures would alleviate local interpretation of what constitutes a disqualifying offense and prevent the employment of dangerous criminals at bonded facilities.

## **Recommendations**

We recommend that CBP's Cargo Control Branch Chief—

1. Establish and implement nationwide standardized policies and procedures for conducting background checks at bonded facilities, including how CBP plans to coordinate with ICE concerning the roles and responsibilities of all parties involved.

2. Provide port directors with a list of criminal offenses that disqualify a job applicant from employment at a bonded facility.
3. Implement a process to ensure that CBP receives and retains background check records, including employee lists and results of background checks.
4. Expand compliance reviews to include bonded facility employee background check results and updates, and reconcile compliance review results with CBP bonded facility file information.

### **Management Comments and OIG Analysis**

CBP concurred with all four of the report's recommendations and intends to use GES to standardize and improve vetting of bonded facility employees. Recommendations 1, 3, and 4 will remain open and unresolved until we receive documentation that CBP has implemented GES and the system is meeting the intent of each of the recommendations. Recommendation 2 is open and resolved, and will be closed once we receive documentation that it has been implemented.

In its response, CBP did not agree that the perceived deficiencies in CBP's management controls over bonded facilities, and specifically the background checks conducted for bonded facility employees, creates a greater risk for terrorist exploitation, smuggling, and internal conspiracies at these facilities to the degree implied in the draft report.

Although we acknowledge that CBP has a layered approach to cargo security and many security risks are mitigated through cargo targeting and inspections before the cargo arrives at a bonded facility, over the past few years OIG and the Government Accountability Office have noted several concerns with CBP's targeting and inspection of cargo. Additionally, multiple ICE investigations and CBP threat assessments have identified numerous illegal aliens and individuals with criminal backgrounds working at bonded facilities, which poses a potential risk.

Finally, CBP's own seaport threat assessments have identified the potential for terrorist exploitation, smuggling, and internal conspiracies at bonded facilities. OIG reviews and ICE investigations point to the need for additional vetting of bonded facility employees to ensure that they do not pose a risk to the port, the cargo, or other bonded facility employees. Since CBP is taking steps to implement GES and plans to identify offenses that would disqualify individuals from employment at a bonded facility, we believe that most of the vulnerabilities noted in our report will be addressed once the recommendations are fully implemented.



## **Appendix A**

### **Purpose, Scope, and Methodology**

The objective of this audit was to determine whether CBP has effective management controls to ensure that employees handling cargo at bonded facilities do not pose a security risk. The scope of our audit included 5 ports and 41 bonded facilities from approximately 2,054<sup>2</sup> bonded facilities and 327 seaports nationwide.

To address our objective, we met with various CBP headquarters and field officials, reviewed CBP policies and procedures, and obtained and analyzed documents pertinent to CBP's process in conducting background checks at the bonded facilities. In addition, we selected a sample of ports that processed the highest volume of containers, and selected additional ports as a representative sample of different locations. Those ports were Los Angeles/Long Beach, California; Newark, New Jersey/New York, New York; Norfolk, Virginia; Houston, Texas; and Miami and Port Everglades, Florida.

At each port, we interviewed CBP officials, ICE officials tasked to conduct background checks for CBP, and bonded facility proprietors. We tested a judgmental sample of 41 bonded facilities that included Bonded Warehouses, Foreign Trade Zones, and Centralized Examination Stations by reviewing documents related to background checks and observing facility operations.

To determine whether the 777 employees working at the 41 bonded facilities during the time of our review had received a background check, we attempted to compare and verify background check information from ICE and CBP. However, due to incomplete and inconsistent information in CBP's files, we were unable to determine if employees at the bonded facilities received a background check or if applicants for employment were not hired because of a criminal background.

To better understand the level of risk that unscreened employees may pose to the port and other employees, we selected 203 of the 777 employees currently working at bonded facilities. Our team worked with OIG investigators to compare the names and Social Security numbers with information in a FBI database.

We conducted this performance audit between December 2010 and November 2011 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives. We appreciate the cooperation by CBP management and staff in providing the information and access necessary to accomplish this review.

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<sup>2</sup> According to CBP, there are many different types and classes of bonded facilities. The 2,054 bonded facilities comprise 57 Centralized Examination Stations, 1,490 Bonded Warehouses, and 507 Foreign Trade Zones.

## Appendix B Managements Comments to the Draft Letter Report


1300 Pennsylvania Avenue NW  
Washington, DC 20229



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

August 25, 2011

MEMORANDUM FOR ANNE L. RICHARDS  
ASSISTANT INSPECTOR GENERAL FOR AUDITS  
DEPARTMENT OF HOMELAND SECURITY

FROM: Assistant Commissioner   
Office of Internal Affairs  
U.S. Customs and Border Protection

SUBJECT: Response to the Office of Inspector General's Draft Report  
Entitled, "Efficacy of CBP's Management Controls Over  
Bonded Facilities"

[REDACTED]

I thank you for providing us with a copy of your draft report entitled "Efficacy of CBP's Management Controls Over Bonded Facilities," and the opportunity to comment on the issues in this report.

As a preliminary matter, the entry of merchandise into bonded warehouses and the safeguarding of such merchandise in the bonded warehouses is primarily a revenue function because, with few exceptions, U.S. Customs and Border Protection (CBP) takes a number of actions to screen merchandise for security threats prior to its movement into a bonded facility. This is done through the normal inspection process, which includes screening for radiation, that occurs at the port of entry before merchandise is released to a bonded carrier for transportation to a warehouse. Once the merchandise reaches the bonded facility, which has physical and custodial security measures in place to prevent merchandise from being diverted or stolen, the bonded warehouse facility and its employees are responsible for its safekeeping. CBP believes that the custodial bond, which requires the bonded warehouse to properly store and protect the merchandise, is an adequate measure to ensure the safekeeping of the merchandise and provides sufficient recourse to recover any lost revenue resulting from a failure to adequately protect and store the merchandise. Moreover, the ability of CBP to assess liquidated damages under the bond acts as an incentive for bonded facility operators to ensure that the merchandise is kept safe and is a deterrent against warehouse employees engaging in illegal activities affecting the stored merchandise. Since any illegal acts by the bonded warehouse employees concerning the stored merchandise can result in liquidated damages against the warehouse operator or proprietor, there is a built-in incentive for the warehouse operators and proprietors to manage and control their employees and hire only those they consider trustworthy. For these reasons, CBP does not agree that the perceived deficiencies in exploitation, smuggling, or internal conspiracies at these facilities to the degree implied in the draft report.

The report contains four recommendations directed to CBP. A summary of CBP actions and corrective plans to address the recommendations is provided below:

**Recommendation #1:** Establish and implement nationwide standardized policies and procedures for conducting background checks at bonded facilities, including how CBP plans to coordinate with ICE concerning the roles and responsibilities of all parties involved.

**CBP Response:** Concur. Bonded facility owners are now required by 19 CFR 19.3(d) and 19 CFR 146.7(g) to submit a written list of their employees names, addresses, social security numbers, and dates and places of birth of all persons employed by the facility to the CBP port director within 30 days after the date of demand. Once CBP's Global Enrollment System (GES) is operational, CBP will take that information and enter it into the system. The GES vetting module will run the information through several databases and will allow CBP to see the results of those checks. With the development of the Trusted Worker Program within the GES, ICE would be removed from the background



## Appendix B

### Managements Comments to the Draft Letter Report

investigation/vetting process entirely. Once GES is operational, policies and procedures will be issued by CBP's Office of Field Operations.

**Completion Date:** January 1, 2012

**Recommendation #2:** Provide port directors with a list of criminal offenses that disqualify a job applicant from employment at a bonded facility.

**CBP Response:** Concur. CBP concurs with the recommendation to develop a list of criminal offenses that disqualify bonded facility principals, bonded facility operators and those individuals with access to inventory control systems (i.e. record keepers) from employment at a bonded facility.

**Completion Date:** January 1, 2012

**Recommendation #3:** Implement a process to ensure that CBP receives and retains background check records, including employee lists and results of background checks.

**CBP Response:** Concur. As part of the GES Trusted Worker Program being developed, records will automatically be retained on all current employees. These records will be automatically vetted on a daily basis. 19 CFR 19.3(d) and 19 CFR 146.7(g) requires bonded warehouse owners to submit a list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the facility. CBP notes that there may be Privacy Act implications for retaining background check records, employee lists, and results of background checks not already covered by existing Systems of Record Notifications (SORNs). This recommendation should take into consideration the potential violations of the Privacy Act, 5 USC 552a, which may be triggered by releasing individuals' background records to employers (bonded facility operators), as well as others. Bonded facility operators may need to obtain Privacy Act waivers/authorizations from potential employees for this purpose prior to background investigations being performed.

**Completion Date:** January 1, 2012

**Recommendation #4:** Expand compliance reviews to include bonded facility employee background check results and updates, and reconcile compliance review results with CBP bonded facility file information.

**CBP Response:** Concur. GES will be used as the new platform for CBP vetting of bonded facility employees. The focus of the vetting procedures are the principals, owners, operators and those individuals with access to inventory control systems (i.e. record keepers). The results of the vetting will be stored in GES for use during compliance reviews. While CBP concurs with this recommendation, CBP notes that the purpose of compliance reviews is to allow CBP Officers a mechanism to physically examine and verify transactions, records, procedures, conditions, and inventory and accounting controls that deal with revenue protection and not with employee background check results. Also, the bonded facility program is a revenue issue and is not a security program. Compliance reviews are conducted on a schedule based on the facilities revenue risk assessment.

**Completion Date:** January 1, 2012

With regard to the sensitivity of the draft report, CBP did not identify any sensitive information that would require a "For Official Use Only" designation or warrant protection under the Freedom of Information Act. Technical comments to the draft report are provided in an attachment to this letter.

If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Ashley Boone, CBP Audit Liaison, at (202) 344-2539.

Attachment

**Appendix C**  
**Major Contributors to this Report**

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