

October 30, 2020

Seth D. Renkema
U.S. Customs and Border Protection
Economic Impact Analysis Branch
Office of Regulations & Rulings
90 K Street – 10th Floor
Washington, DC 20229

U.S. CUSTOMS & BORDER PROTECTION
DOCKET No. 1651-0090
AGENCY INFORMATION COLLECTION ACTIVITIES - COMMERCIAL INVOICE

Dear Mr. Renkema:

The National Customs Brokers and Forwarders Association of America (“NCBFAA”) appreciates the opportunity to comment on U.S. Customs & Border Protection’s (“CBP”) Notice of the Extension of Agency Information Collection Activities, Commercial Invoice, published in Federal Register Vol. 85, No. 190 on September 30, 2020. The NCBFAA represents more than 1,000 member companies with 110,000 employees in international trade comprising the nation’s leading freight forwarders, customs brokers, ocean transportation intermediaries, NVOCCs and air cargo agents, serving more than 250,000 importers and exporters. The commercial invoice is vital to ensure compliance with customs and other partner government agency laws and regulations impacting the daily processing of international trade and entry of goods from the standpoint of both the private and public sector.

CBP is seeking comments on one or more of the following points:

- (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and
- (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

NCBFAA asks CBP to consider the following points:

1. CBP Should Maintain Commercial Invoice Collection with Flexibility Based on Commercial Practices

NCBFAA supports CBP's proposal to extend its collection of the commercial invoice. We recognize that invoices, when available in the ordinary course of business, are necessary for customs brokers to file entry with appropriate data that the customs laws and regulations require. However, a commercial invoice indicates that there is a transaction with a price already agreed upon that the foreign seller and U.S. buyer will pay. However, there often are shipments that are consigned, leased, etc. where the parties have not established a price to be paid and other commercial invoice information may not be available.

In such cases, CBP should recognize that a commercial invoice as required in 19 C.F.R. §141.86 does not exist consistent with commercial practice. As it does to a limited extent in 19 C.F.R. §141.86(b), the regulation only should require all the information normally provided on a commercial invoice on an as needed basis and when appropriate to the transaction. Further, CBP should update the regulations to extend the use of documents such as a pro forma invoice per 19 C.F.R. §141.85 or transaction summary sheet as long as they reasonably reflect the information requirement of a commercial invoice. CBP also should require a commercial invoice whenever possible, but alternatively a document with the required information needed for value, classification and admissibility could be provided. If such document is provided, the commercial invoice should be considered waived unless the Director of the Center of Excellence and Expertise determines that a commercial invoice is needed.

Further, while we agree that CBP should maintain the commercial invoice requirements as set forth in 19 C.F.R. §141.86 to clarify the information that importers must provide customs brokers to file entry, we would not advocate for a particular form or format by which the data must be presented or provided.

2. CBP Should Amend its Regulations So that They No Longer Reflect that a Commercial Invoice Always Must Accompany an Entry

19 C.F.R. §141.81 and §141.83 provide that a commercial invoice must be presented for each shipment at the time of entry. While customs brokers obtain and maintain such invoices in the ordinary course of business they do not typically transmit or present them at the time of entry. Accordingly, we suggest that it would be more appropriate for the regulations to clarify that an importer be required possess a commercial invoice and provide one to its customs broker, where available and appropriate, and make it available upon request by CBP. This would more accurately reflect the current commercial reality and practice not only on the part of customs brokers and importers but also on the part of CBP who as a matter of policy does not require or expect a commercial invoice to accompany each transaction.



3. CBP Should Amend its Regulations Requiring Additional Information for Certain Classes of Merchandise

As currently written, 19 C.F.R. §141.89 requires additional, sometimes substantial, information for specific types of merchandise on the commercial invoice. Once again, this does not reflect the commercial reality for foreign sellers and U.S. buyers nor what CBP has come to expect over the years. Similarly to our prior comments regarding the requirement of a commercial invoice for each entry, CBP should consider amending the regulation to indicate that such information should be provided where available and appropriate and made available upon request by CBP but not required with each entry.

4. CBP Should Provide an Automated Invoice Interface in ACE that Would Allow Customs Brokers to Transmit Commercial Invoice Information Electronically

In the Automated Commercial System that predated ACE, customs brokers were able to submit commercial invoices electronically via the Automated Invoice Interface (“AII”), which is defined in 19 C.F.R. §143.32 as a method of transmitting detailed invoice data through ABI. Although the customs brokerage industry had requested it, the ACE system still lacks such functionality. The NCBFAA highly recommends that CBP take action to procure the necessary funding to develop AII in the ACE system. This would provide a critical tool for customs brokers to transmit, and CBP officials to receive, commercial invoice data and information needed to more reliably and accurately fix classification, value, origin and, hence, duty as well as admissibility determinations in a streamlined manner.

5. CBP Should Adjust its Estimated Time Per Response and Burden Per Commercial Invoice

CBP estimates a one (1) minute time of response for invoice submission activity in the Notice. NCBFAA believes this task takes significantly longer to complete due to the time required to collect/obtain the invoice, access an internal imaging system, review the invoice for completeness, add the invoice to CBP’s DIS, and then submit. This is particularly the case now that the ACE system no longer contains the AII functionality. In ACE, this certainly would take a customs broker more than one minute for a document(s) upload, along the lines of four minutes per response, particularly for a multi-line invoice.



We appreciate the opportunity to comment on the Notice as commercial invoices are so central and vital to the daily work of our members. Please do not hesitate to contact us should you have any questions or require any clarification.

Sincerely,

**NATIONAL CUSTOMS BROKERS AND FORWARDERS
ASSOCIATION OF AMERICA**

By: *Lenny Feldman*

Lenny Feldman
Customs Counsel

cc: Jan Fields, President
cc: Mary Jo Muoio, Customs Committee
cc: Daniel Meylor, Customs Committee
cc: Megan Montgomery, Executive Vice President

