

Via FedEx

December 5, 2014

U.S. Customs and Border Protection
Office of International Trade
90 K Street, NE – 10th Floor
Washington D.C. 20229-1177

Attention: Tracy Denning, Regulations and Rulings

Re: Comments of Northern Border Customs Brokers Association
Importer ID Input Record/CBP Form 5106
Our Reference: 60507-0290001

Dear Ms. Denning:

On behalf of the Northern Border Customs Brokers Association (“NBCBA” or “the Association”) and in accordance with the 60 – Day Notice and request for comments,¹ the Association respectfully submits the following comments on U.S. Customs and Border Protection’s (“CBP” or “Customs”) proposed changes to Custom Form (“CF”) 5106.

Introduction

NBCBA has been the voice for Customs Brokers who do business along with the Northern Border of the United States since its inception in 1959. The Association has a unique perspective in facilitating trade between the United States and Canada.

As an organization representing those immediately engaged and directly affected by developments in international trade, trade facilitation, and supply chain security at the Northern Border, NBCBA is very familiar with the impacts of policies and programs implemented by the Customs Services of both the United States and Canada. From this unique perspective, the Association offers its comments. NBCBA’s comments speak generally to the unique issues raised with our largest trading partner to the North.

As a point of reference, we believe it helpful to set forth the unique business environment at the northern border. The vast majority of transactions are by truck or rail as compared to the

¹ Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61091 (Oct 9, 2014).

rest of the country where ocean and air are the norm. Moreover, the Northern border operates on a 24/7 basis with clearances taking place at all hours of the day and night on short notice.

A significant percentage of transactions include a Canadian non-resident Importer of Record (“NRIOR”). The Canadian non-resident importer is the customer of the broker and the party with whom the broker has the most significant relationship. It is the current practice of Customs to collect required data regarding the Importer of Record (“IOR”) but limited data (name and address) of the party to whom goods are sold/delivered. NBCBA members are called upon to enter these goods based on paperwork created by the Canadian exporters who traditionally act as Importer of Record.

Discussion

Consistent with legitimate security concerns of CBP and the various treaties between Canada and the United States, NBCBA believes the following changes would be appropriate to the proposed CBP Form 5106 or comments need to be addressed before moving a revised format.

1. The form should be amended to provide clear instructions as to the specific parties for whom Customs requires information. Currently the form identifies multiple parties (not limited to, Importer, Consignee/Ultimate Consignee, Drawback Claimant) for which CBP has different interests.² During a recent meeting with NBCBA on October 14, 2014, CBP made it abundantly clear that it was not Customs intent to collect extensive data on the “sold to”/“delivered to”³ party nor use this information for targeting purposes. However, the form and its instructions, as published, do not reflect Customs intention. We think it is incumbent on Customs to make clear which specific data elements are required for the following parties:
 - a) Importer of Record,
 - b) Sold to/delivered to party, and/or
 - c) Drawback claimant.

² Moreover, these parties have different definitions in different portions of the Customs Regulations.

³ We have specifically not used the terms consignee or ultimate consignee since they have different meanings in different parts of the Customs Regulations.

NBCBA believes that CBP must identify, with specificity, the mandatory information field for each party it seeks information. CBP's need for information varies with the different parties in the transaction. As drafted, the revised CF5106 treats all parties identically. The failure to distinguish the information required between the various parties and giving succinct instruction of the information for the filer to provide will cause an uneven playing field and inconsistent treatment at the various ports of entry. Should CBP determine that Sections 1 and 2 are mandatory (as it has previously stated) and everything else is optional, it must say so in the form and instructions.

2. Unique to the northern border of the United States is the entry of merchandise by Canadian non-resident importers of record. With respect to the non-resident Importer of Record who enters merchandise into the commerce of the United States, NBCBA believes that the information collected regarding the "deliver to"/"sold to" party of the goods, should be limited to Box 1A and 2B (street address, city, state, and zip code) but omit from 2B a description of the address since the filer of the form 5106 has no knowledge as to whether this address is a residence, business, etc. This would keep the requirements consistent with CBP's current policy (See point 1, above) and within the framework of Beyond the Border obligations, discussed more fully below. Moreover in the context of the 24/7 environment of the Northern border and the broker having no direct relationship with the sold to/deliver to party, it may be impossible to obtain further data without interrupting the flow of goods.
3. As a sub-set of transactions described in Paragraph 2 regarding Canadian Non-resident importers of record, there are many transactions wherein Canadian importers of record consolidate shipments destined for multiple sold to/deliver to parties. When individual shipments are valued less than \$2500 (informal entry limit), the Customs broker reports the name/address of the sold to/deliver

to party. When the consolidated entry summary is filed, ACE requires reporting the EIN/SSN at the individual shipment line level. For the purposes of administrative consistency and well as the reality of life at the Northern border, NBCBA propose that the only information that should be required at the time of entry summary for the sold to/deliver to party should be the name and address. This will help create uniformity and continuity in data collection from release function to filing of entry summary. Failure to adjust the ACE current data collections processes poses a significant increased burden on filers.

NBCBA's greatest concern for these low value shipments is that merchandise is invoiced by the non-resident importer of record providing the name and address of the sold to/deliver to party.⁴ The commercial reality is that the consolidated, low value shipments arrive 24 hours a day, 7 days a week. If the broker is required to provide additional data (such as the social security number) for the sold to/deliver to party at time of release, gridlock will occur at the border. The requirement of data that may be missing for a single shipment of a consolidated many, may trigger unnecessary inspections at a minimum or turn-around of a truck at worse. Having two separate, non-uniform data requirements between entry release and summary is a significant burden for the filer who may not be able to obtain the current ACE data requirements after the cargo has been released from Customs custody. The requirements for release and summary must be harmonized.

4. The Federal Register notice does not make clear when a new Form 5106 must be filed. Customs has advised the trade that it would not have to file CF5106 for existing importers. However there will be a point in time that some event

⁴ By way of example, a U.S. consumer places an order on the internet. They have no idea that the goods are being distributed from Canada. In light of identity theft, it is not reasonable to expect a consumer to provide their Social Security number in a transaction purchasing consumer goods.

(e.g., change of address may trigger the filing of an updated CF5106). There are no instructions or clarity as to when a Form 5106 should be filed for a “known” or existing importer and most significantly, how much information needed to be filed. By way of example, a Fortune 500 company has a Form 5106 on file but the corporate address changes. Does Customs expect a change in address or the completion of the entire form? NBCBA believes that only relevant changes should be updated. In this way, the filer burden will not be increased. As the CF5106 is currently proposed, the burden on the filer to research the new additional information could exceed 5 hours per filing – an unacceptable burden. Consequently, the cost to NBCBA members could be astronomical.

5. NBCBA was advised that Customs is working on an “app” so that commercial (non-licensed) parties could input Customs information. We note that while the idea of direct input of information into Customs systems were previously floated with the trade, the Federal Register notice made no mention of direct input of data by any party other than the filer. The NBCBA, while applauding Customs efforts to streamline data collection, believes that importers and consignees unfettered access to inputting CF5106 data may lead to a less secure environment. The NBCBA believes that Customs creation of an “app” to permit non-licensed parties to input data is inconsistent with its stated desire to have brokers vet information filed with the agency. Currently, the broker and the sureties have exclusive access to all information and are in the position to input vetted information. The vetting function of the broker will all but disappear.

While the brokerage community does not necessarily want to be the repository of confidential information that could lead to identity theft (Social Security Numbers, passport numbers, etc.), NBCBA would propose that checks and

balances be inserted into the “app” system should Customs move forward with direct data input by non-licensed parties. In this regard, NBCBA proposes that a third party (whether importer, sold to party, etc.) should not be able to insert data until the broker inputs “shell” information to create the CF5106. Customs could then create a unique identifier⁵ provided to the broker who may then forward the unique identifier to the appropriate party permitting it one-time access to input confidential information. In this way, there could be limited access to the input of data to known parties. We further suggest that this procedure (opening the shell by the broker to generate a unique identifier) be in place for all future inputs of data by third parties to protect the integrity of the data. In this way, the broker could still vet their clients and only give access to the 5106 to an appropriate party. Further, the burden, while increased, will be less than if the broker has to chase down multiple importer parties to input confidential information.⁶

6. A review of the data elements in the proposed 5106 raises the question of whether mismatches will occur when information is also provided to PGAs. Information filed on PGA forms (e.g., FDA, CPSC) may require different destination data. NBCBA would prefer that the data requested be harmonized with the other governmental agencies for which Customs acts as enforcement gatekeeper.
7. Canada has very strict privacy laws and rules. In this regard, the proposed Form 5106 asks for information that would not be provided by Canadian Nationals

⁵ In the bond query system, Customs already created an encrypted number.

⁶ It is also possible the requiring/permitting the importer to input necessary data could cause “grid lock” at the border. In our experience, brokers are more attuned to Customs need for required information than importers. We imagine many scenarios where importers will either not provide all mandatory information (e.g., personal data) or the import group of the company charged with interfacing with Customs won’t have the necessary information. The result will be goods that would otherwise be admissible being turned around at the border.

generally.⁷ This would include Passport numbers, Social Security Numbers and their equivalents. Requiring such information can create havoc at the border in cases where even a single importer refuses to provide this information in a consolidated shipment.

8. In addition to CBP's intent, any functional reporting changes that impact goods flowing in either direction at the Canadian border be consistent with United States treaty obligations under North American Free Trade Agreement⁸ as well as the Beyond the Border Initiative.⁹ NBCBA is concerned that the requirement for further data, the unilateral increase in data collection without consultation with Canada will violate both the letter and spirit of the Beyond the Border Initiative. The Beyond the Border Action Plan calls for the use of common data for both the export from Canada and the Import from the United States to expedite trade. Thus, before collecting further data, NBCBA believes that the United States would be required to consult with the government of Canada to harmonize all data elements.

⁷ In this regard, we are currently precluded from asking truck drivers from Canada for their license numbers as it would be a privacy violation.

⁸ North American Free Trade Agreement, U.S.-Can.-Mex., signed Dec. 17, 1992, 32 I.L.M. 289 (1993) (entered into force Jan. 1, 1994).

⁹ On February 4, 2011, President Obama and Prime Minister Harper announced the United States-Canada joint declaration, *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*. *Beyond the Border* articulates a shared approach to security in which both countries work together to address threats within, at, and away from our borders, while expediting lawful trade and travel. On December 7, 2011, President Obama and Prime Minister Harper released the Beyond the Border Action Plan, which sets out joint priorities and specific initiatives for achieving this vision. On December 19, 2013, the White House released the second annual Beyond the Border Implementation Report, which summarizes the significant progress made in the second year following the release of the *Beyond the Border Action Plan*. On December 14, 2012, the White House released the first Beyond the Border Implementation Report. On December 19, 2013, the White House released the second annual Beyond the Border Implementation Report, which summarizes the significant progress made in the second year following the release of the *Beyond the Border Action Plan*. On December 14, 2012, the White House released the first Beyond the Border Implementation Report. The governments of the United States and Canada have worked together in a concerted way to advance our shared interests in perimeter security and economic competitiveness, achieving results that will improve the lives of residents, visitors, and businesses in both our countries. See, <http://www.dhs.gov/beyond-border-shared-vision-perimeter-security-and-economic-competitiveness>.

9. The revised form requires personal information regarding individuals at the company. Currently, the form refers to “Company Officers who have importing and financial knowledge of the company. . .” Presumably, pursuant to other statutes such as Sarbanes-Oxley that knowledge is imputed to the highest levels of the company. Is it Customs intention that the CEO, CFO, etc. provide the requisite information or is it Customs intention that the person with specific import knowledge, e.g., mid-level manager provide this requisite information. Once again, neither the Federal Register notice, the form nor the instructions provide any direction. Assuming this information continues to be required after review of comments, NBCBA requests that Customs clarify the specific parties it requires personal information.

The NBCBA is happy to schedule a conference with CBP to more fully discuss their concerns.

Thank you for the opportunity to comment. Please feel free to contact the undersigned if you have any questions, require any further information or would like to schedule a conference.

Very truly yours,

GRUNFELD, DESIDERIO, LEBOWITZ,
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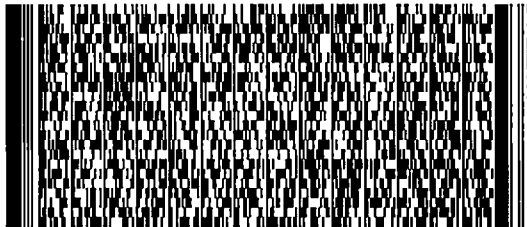
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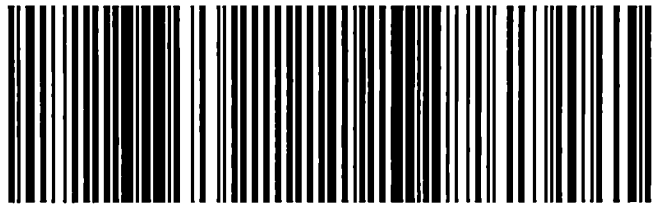
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