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Via E-mail

August 26, 2015

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

Attention: Tracey Denning
Regulations and Rulings

Re: Comments of Northern Border Customs Brokers Association
Importer ID Input Record/EBP 5106
Our Reference: 60507-029-0001

Dear Ms. Denning:

On behalf of the Northern Border Customs Brokers Association (“NBCBA” or “the Association”) and in accordance with the 30 – Day Notice and further 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 supplementing its prior submission, dated December 5, 2014, copy appended for ease of reference.

Introduction

NBCBA has been the voice for Customs Brokers who do business along 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.

¹ Agency Information Collection Activities: Importer ID Input Record, 80 Fed. Reg. 44361 (July 27, 2015).

As an organization representing those immediately engaged and directly impacted by development to 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 east and west coast borders 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.

I. The proposed 5106 form substantively changes required data in the case of a Non-Resident Importer of Record

Customs comments on "Ultimate Consignee"/ "sold to"/ "deliver to" parties will disparately impact the Northern Border Commerce. Moreover, CBP's responses to the comments previously raised do not correlate with the underlying regulatory regime. The relevant comments and responses include:

COMMENT

The definition of consignee and ultimate consignee are very different depending on the role in the supply chain. It is the suggestion that CBP change the definitions of the terms to "sold to" or "deliver to" party depending on the role that is being used during the entry process.

CBP RESPONSE

CBP will not seek any changes to the definition of Consignee or Ultimate Consignee at this time as it is outside the scope of the revision to the CBP Form 5106.

COMMENT

While the proposed instruction on the CBP Form 5106 do indicate that a consignee to the import transaction need only complete block 1 and 2 of the proposed revised form, it is requested that CBP identify what the minimum data requirements are in block 1 and 2 for a sold to or delivery to party to be placed on file.

CBP RESPONSE

CBP is requesting filers of the CBP Form 5106 to provide the information if available. If the requested information is not available then CBP will provide instruction that the fields are to remain BLANK. The requested information can be presented as an updated CBP Form 5106 at another time. [Emphasis added].

COMMENT

It is recommended that the information collected regarding the “deliver to/sold to” party of record of the goods should be limited to Block 1A and 2B (street address, city, state, and zip code) but omit from 2 B a description of the address since the filer of the CBP Form 5106 has no knowledge as to whether this address is a residence, business etc.

CBP RESPONSE

CBP will require the presentation of most of the requested information and the completion of the entire CBP Form 5106, if that data is available. If the requested information is not available then CBP will provide instruction that the fields are to remain BLANK. The requested information can be presented as an updated CBP Form 5106 at another time. [Emphasis added.]

COMMENT

It is agreed that the IRS issued SS/IR/EIN number should continue to be used to identify, specifically, the Importer of Record in an entry transaction and that the CBP Form 5106 is the proper means of providing that information to CBP. However, we feel that the purchaser/ship-to party (which may or may not also be the Importer of Record) cannot adequately be identified by an SS/IR/EIN. It is felt that the purchaser's name and address should be transmitted directly to CBP and used as the means of identification for this type of transaction.

CBP RESPONSE

The regulations regarding the submission of the CBP Form 5106 has not changed; therefore, the regulation and any policy regarding the “purchaser/ship to party” will remain unchanged, at this time.

Northern Border Release

COMMENT

Northern border release is a 24/7 operation with the heaviest demand for pre-arrival release processing occurring after 5pm where advance notice of a pending importation may be a matter of hours rather than days or weeks as in the air and sea environment. We contend that the transmission of name and address for a consignee not acting as Importer of Record on an entry/release or entry summary would be a more accurate representation of the parties related to the import transaction and provide CBP the means for a more meaningful security targeting.

CBP RESPONSE

The current regulation and any policy regarding the entry/release process will remain in effect, at this time.

As discussed in our earlier submission, 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 or exclusive 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.

To the extent a substantial number of transactions involve NRIOR, with individual transactions under \$200 Customs currently requires the broker making entry to provide the name

and address of the “sold to” or “deliver to” party also referred to as the “Ultimate Consignee” based on the following Customs Directive:

Customs Directive 3550-079A (dated June 27, 2001)

6.3 The Ultimate Consignee at the time of entry or release is defined as the party in the United States, to whom the overseas shipper sold the imported merchandise. If at the time of entry or release the imported merchandise has not been sold, then the Ultimate Consignee at the time of entry or release is defined as the party in the United States to whom the overseas shipper consigned the imported merchandise. If the merchandise has not been sold or consigned to a U.S. party at the time of entry or release, then the Ultimate Consignee at the time of entry or release is defined as the proprietor of the U.S. premises to which the merchandise is to be delivered. [Emphasis added.]

Based on this Customs directive, the “sold to” or “delivered to” party must be identified and a Customs Form 5106 must be on file or an error message will be sent by Customs. Thus there is a potential disconnect between the proposed Customs Form 5106 and Customs requirements for entry filing. In this regard, the errors in filing the 5106 are set forth in CATAIR Appendix G Common Errors. For ease of reference we provide a link to the CATAIR² and we reproduce the two relevant errors below.

484	ULTIMATE CONSIGNEE NOT ON FILE	THE CONSIGNEE NUMBER, TRANSMITTED IN THE SUMMARY INPUT IN REC 10, POS 20-31, MUST BE LISTED ON THE SRE DATABASE. IF THE CARGO RELEASE APPLICATION (HI) IS USED, THE CONSIGNEE NUMBER TRANSMITTED IN THE H2 REC, POS 11-22,
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²

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAAahUKEwiE1Lexj6fHAhUDWj4KHSVZAD8&url=http%3A%2F%2Fwww.cbp.gov%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fapp_g_3.doc&ei=2RvNVcSDCIO0-QGls0H4Aw&usg=AFQjCNFWxrwjCR7b_OYkvcWTuYRogI96MA

		<p>MUST BE LISTED ON THE SRE DATABASE. IF THE CONSIGNEE NUMBER IS NOT ON FILE, THIS WARNING MESSAGE WILL RESULT (THIS IS NOT A REJECTION MSG). OTHER APPLICATIONS THAT WILL RECEIVE THIS ERROR MESSAGE INCLUDE THE AUTOMATED INVOICE INTERFACE (CI).</p> <p>THIS MESSAGE CAN BE A REJECT IF THE ENTRY INVOLVES FDA REGULATED MECHANDISE BEING SENT THROUGH THE FDA INTERFACE. THE ULTIMATE CONSIGNEE MUST BE ON FILE BEFORE SELECTIVITY RUNS BECAUSE FDA REQUIRES AN ULTIMATE CONSIGNEE. FILER MUST DO A 5106 UPDATE AND RE-TRASMIT THE ENTRY.</p>
ACQ	ULTIMATE CONSIGNEE IS INACTIVE	<p>THE IDENTIFICATION NUMBER FOR THE ULTIMATE CONSIGNEE (HI APPLICATION, REC H2, POS 11-22 OR EI APPLICATION, REC 10, POS 20-31) IS CURRENTLY IN 'INACTIVE' STATUS ON THE IMPORTER FILE (SRES). ABI FILERS SHOULD USE APPLICATION 'TI', 5106 UPDATE, TO SUBMIT THE REACTIVATION. IF THE NUMBER IS A U.S. CUSTOMS ASSIGNED NUMBER, THE FIELD CAN REACTIVATE THIS NBR BY USING "SREA".</p> <p>NOTE: AS OF SEP 1, 2007, IMPORTER NUMBER UPDATES, AS WELL AS IMPORTER/BOND QUERIES, ARE PROCESSED IN ACE. FUNCTION 'SREA' HAS BEEN DISABLED AS OF SEP 1.</p>

In either case, in order to obtain release, a Form 5106 must be filed. Currently, the only information necessary is the name and address of the “sold to” or “deliver to” party. While the comments permit this limited filing leaving the balance of the information “BLANK”, it also

seems to indicate that the broker has an affirmative obligation to present “an updated CBP Form 5106 at another [unspecified] time.” The instructions need to make clear that no further data need be input.³

The requirement to file a form 5106 in the NRIOR context with information beyond name and address to the Ultimate Consignee for shipments under \$2,500 is a substantial change in practice. It will have a significant impact on 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, the Customs broker reports the name/address of the sold to/deliver to party⁴. When the consolidated entry summary is filed, ACE requires reporting the EIN/SSN at the individual shipment line level.⁵

Further the instructions for current Customs Form 7501 (entry) require the following information:

BLOCK 25) ULTIMATE CONSIGNEE NAME AND ADDRESS

At time of Entry Summary, record the name and address of the individual or firm purchasing the merchandise or, if a consigned shipment, to whom the merchandise is consigned. If those parties are not known, indicate to

³ The proposed form 5106 seems to require new data elements, including:

- 1B) IRS Number or Social Security Number
- 1C) Whether or not the recipient is as a DIV, AKA or DBA
- 1G) The Juridical Nature of the importer, e.g., sole proprietor, corporation, etc.
- 1H) How many entries will be filed in a year
- 2A/B) The nature of the address.

⁴ During the 2015 winter meeting of NBCBA in discussions of the changes to Form 5106, Customs was quite clear that the name and address was sufficient for targeting in the NRIOR situation.

⁵ You will note that most brokers at the Northern Border do not file consolidated entries utilizing ACE at this juncture since they do not have the EIN/SSN of the sold to/deliver to parties.

whose premises the merchandise is being shipped. If this information is the same as the importer of record, leave blank.

Note: For express consignment shipments and land border shipments, at the time of Entry Summary, record the name and address of the individual or firm for whose account the merchandise is shipped. The account of party is the actual owner, who is holder of title of the goods.

In the space provided for indicating the state, report the ultimate state of destination of the imported merchandise, as known at the time of entry summary filing. If the contents of the shipment are destined to more than one state or if the entry summary represents a consolidated shipment, report the state of destination with the greatest aggregate value. If in either case, this information is unknown, the state of the ultimate consignee, or the state where the entry is filed, in that order, should be reported. However, before either of these alternatives is used, a good faith effort should be made by the entry filer to ascertain the state where the imported merchandise will be delivered. In all cases, the state code reported should be derived from the standard postal two-letter state or territory abbreviation.

Under ACE with the elimination of CF 7501, the broker when following a consolidated entry will have to provide the line level EIN/SSN as follows:

- **Sold to Party Number**

General

Record the last known entity to whom the goods are sold or agreed to be sold. If the goods are imported otherwise than in pursuance of a purchase, the identifying number of the owner of the goods must be provided.

The Sold to Party Number must be formatted in one of the following ways:

- As a SSN: ‘NNN-NN-NNNNb’ (Where ‘N’ is numeric and ‘b’ is a space).
- As an IRS Number with NO suffix: ‘NN-NNNNNNNNbb’ (Where “N” is numeric and “b” is a space).
- AS an IRS Number with a suffix: ‘NN-NNNNNNNNss’ (Where ‘N’ is numeric and ‘s’ is A-Z, 0-9 [neither of the positions of the suffix can be space]).

- As a CBP assigned identifier: ‘YYDDPP-NNNNN’ (Where ‘YY’ is a calendar year when the number was assigned, ‘DDPP’ is the district/port where the number was assigned, and ‘N’ is numeric).

ACE Entry Summary Instructions, Version 2.4. The new ACE reporting as well as the ambiguous instructions of the proposed CF 5106 are inconsistent with CD 3550-079A in that EIN/SSN date is currently not required for shipments under \$2,000.

For the purposes of administrative consistency and well as the reality of life at the Northern border, NBCBA proposes that Customs clarify 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 for both the Form 5106 and ACE line reporting. Customs needs to further clarify that there is no further obligation to amend the Form 5106. 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 to correspond with the Form 5106 requirement 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. 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 likely 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 such that in these circumstances only the name and address is needed for the Form 5106 and in ACE.

II. Canadian Privacy Laws prohibit Canadian Businesses to Request Personal Identifying Data.

Customs seems to focus in its response on the request of personal data to employees.

COMMENT

The proposed changes also seem to require data from officers of U.S. importers regardless of citizenship or residency. If that is the case, CBP could require companies to provide personal data for individuals who are residents or citizens of countries – including members of the European Union, Switzerland, Canada, Argentina, Chile, Uruguay, India and Australia – that have strong data privacy laws. Many of these countries consider it coercive for an employer to ask an employee for consent to share personal information.

CBP RESPONSE

Although CBP is requesting additional information from the IOR, the additional data will enhance CBP's ability to make an informative assessment of risk prior to the initial importation, and will provide CBP with improved awareness regarding the importers and or the consignees who have chosen to conduct business with CBP. The data requested in 3J with respect to Social Security Number, Passport Number, Passport Type, and Country of Issuance are optional data elements on the CBP Form 5106.

CBP is requesting that the company who has elected to conduct business within the United States present the requested information for Company Officers who have importing and financial business knowledge of the company listed in section 1 and the legal authority to make decisions on behalf of the company listed

The comments do not address business parties who sell and import merchandise into to the United States being requested to require confidential information from their customer. 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.

Further, 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 generally.⁶ This would include Passport numbers, Social Security Numbers and their equivalents. Requiring such information related to sold to/delivered to parties can create havoc at the border in cases where even a single importer refuses to provide this information in a consolidated shipment. These privacy issues were first raised in the 14th term of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC). We believe that Customs proposed changes should be presented to COAC for vetting before any further action is taken.

III. CBP Changes In Reporting Data Violate The Terms and Spirit of the Beyond the Border Initiative.

The comments give short shrift to the United States Treaty obligations.

Comment

It is the Trade Community's opinion that any functional reporting changes that impact goods flowing in either direction at the Canadian border be consistent with the United States treaty obligations under the North American Free Trade Agreement (NAFTA) as well as the Beyond the Border initiative. It is our concern that the requirement for additional data, without consultation with Canada will violate both the letter and the 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, it is believed that the United States would be required to consult the government of Canada to harmonize all data elements.

⁶ In this regard, Customs Brokers at the Northern Border are currently precluded from asking truck drivers from Canada for their license numbers as it would be a Canadian privacy violation.

CBP Response

The obligations listed under the North American Free Trade Agreement and the Beyond the Border initiative does not preclude CBP from making revisions to the import document (CBP Form 5106); nor is there a CBP policy document that delineates CBP's obligation to consult Canada with regard to revisions to CBP documents.

Any functional reporting changes that impact goods flowing in either direction at the Canadian border must be consistent with United States treaty obligations under North American Free Trade Agreement⁷ as well as the Beyond the Border Initiative.⁸ 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 unilaterally collecting further data, NBCBA believes that the United States would be required to consult with

⁷ 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).

⁸ 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>.

the government of Canada to harmonize all data elements. Customs disingenuous statement that no CBP document exists requiring them to consult Canada does not change the fact that Customs is giving short shrift to their largest trading partner and the treaty obligations and related documents between the two governments.

IV. Customs Estimated Time to Complete the Revised Form 5106 Does Not Comport with Reality.

Customs noted in its comments that its original estimate was insufficient. The responses note:

Estimate of Time For the completion of the form

Comment

Stated estimates regarding the burden of the collection of information on industry may not be accurate, since it would take additional time to overcome internal restrictions on disclosure of personal data and its potential legal implications.

CBP Response

CBP does agree with this comment as some of the additional data is optional. CBP will make the appropriate changes to the estimation of time to allow for the collection of the requested information.

The Cost of the Average Data Collection

Comment

It is believed that the average data collection cost per hour is approximately \$25.00 for personnel as well as information systems to transmit and store the data.

CBP Response

For brokers and importers, CBP uses \$28.50 for the average hourly cost.

A polling of NBCBA members who participated in drafting these comments concur that to realistically obtain the necessary data will take in excess of 2 hours for most filings. This time factor takes into consideration that the broker's relationship is with the NRIOR rather than the sold to or deliver to party. Thus, the broker will have to spend two to four times the normal effort to verify/collect the required data. It should also be noted that many of these NRIOR entries are "one offs", that is they are not repeat transactions.⁹

Moreover, Customs estimate of \$28.50 assumes that a low level staff member will be performing this task. However, due to the sensitive nature of the inquiry, not limited to Social Security numbers, passport information, it is more like to be a managerial employee at a rate that is double or more Customs present estimate. The consequence of this is that Customs is requiring the broker to spend more than they can charge in the market for their services to complete the Form 5106.

NBCBA believe that Customs should recognize and quantify a realistic burden that it is imposing by using its current burden estimates.

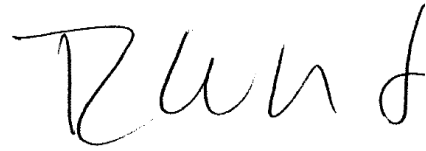
The NBCBA is happy to schedule a conference with CBP to more fully discuss their concerns.

⁹ The problem is aggravated by the fact that the broker can not use Customs systems to determine if a 5106 is on file for a sold to or deliver to party. It is quite possible that a 5106 is on file and was filed by a different broker at the Northern Border for the same party.

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,
SILVERMAN & KLESTADT LLP



Richard M. Wortman
Counsel for NBCBA

RMW/eg

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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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