

## **CBP FRN 5106 Comments**

### **When will a new CBP Form 5106 need to be filed?**

#### **Comment**

If an existing CBP Form 5106 is on file, when will a new form (will the extra data elements) be required to be filed? The proposed CBP Form 5106 requires a significant amount of corporate information in a non-static corporate environment. Companies move, re-organize and change officers on a regular basis. If an officer is no longer associated with the company, is there an obligation to submit a new CBP Form 5106? CBP needs to clarify when this information must be updated. Is it the importer's obligation to keep this information current?

#### **CBP Response**

The regulation (19 CFR 24.5) for the CBP Form 5106 has not changed. The regulation states that, if there is a [notification of Importer's Number](#), [Application for Importer's Number](#) or a [Notice of Change of Name or Address](#) with the first formal entry which is submitted, a Customs Form 5106 shall be filed or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. Therefore, any changes that may occur in block 3 ("Company Information") of the document would not require the submission of a new CBP Form 5106.

The Importer of Record (IOR) is ultimately responsible for his/her import transactions and his information so that he can receive bills and refunds in a timely fashion. It is important that the IOR's information is kept current when changes occur in either the name or address.

#### **Comment**

Although it is felt that the CBP Form 5106 primarily is used by new importers, established importers will have occasion to use it as well. An established importer may wish to establish a new division, subsidiary or to add a new suffix to an existing IOR, will it be necessary to file a CBP Form 5106 in these circumstance?

#### **CBP Response**

Yes, it will be necessary to file a new CBP Form 5106. The regulation (19 CFR 24.5 (d)) dictates that it would be necessary to file a CBP Form 5106 for the addition of new suffix and for the establishment of a new division or subsidiary under the provision of 19 CFR 24.5(b).

#### **Comment**

Would all importers need to file the new CBP Form 5106 within a certain timeframe? Or would certain data elements be required only for first-time importers?

#### **CBP Response**

For an existing Importer of Record (IOR), who is currently in ACS/ACE, no new 5106 is

required because all existing IORs will be automatically grandfathered into the process.

CBP is requesting filers of the 5106 to provide all the information, if available, listed on the form, but the SSN or the TIN of the Importer in Block 1B is a mandatory data element.

## **The agency's collection, use and possible dissemination of Personally Identifiable Information (PII) contained in Block 3 of the Revised CBP Form 5106**

### **Comment**

The CBP Form 5106 requires the provision of sensitive personal information about the importing company's officers, including Social Security Number ("SSN"), and other personal information through submittal of passport data. We do not believe this information should be shared, inasmuch as the company has done the necessary due diligence (including background checks) on the individuals listed as officers and members of the Board. The certification provided by the signature on CBP Form 5106 should be sufficient confirmation of the company's due diligence. Therefore, we respectfully request that CBP consider not including the requirement to provide personal officer data on CBP Form 5106.

### **CBP Response**

19 CFR 24.5 authorizes the CBP to collect Social Security numbers (SSNs) of an Importer of Record on the CBP Form 5106, and implements CBP's authority to collect the taxpayer identification number and SSN as provided for in 31 U.S.C. 7701; the principal purpose for the submission of one's Social Security number to CBP is to identify the individuals wishing to conduct business with CBP and to assist the agency in regulatory compliance, investigations, and administrative or judicial proceedings.

CBP has also created a mobile application which will allow users to access the CBP Form 5106 through mobile phones and tablet devices. The mobile application will be accessible to a broad array of users and the form will be operable through various types of mobile and tablet devices, such as the Android and the Apple products. The mobile application will provide an alternative process for CBP to receive the new form along with the capability for the user to utilize a secure environment in which to present their PII to CBP. This is an effort to support trade entities who will have to present the additional data to CBP.

Once the CBP Form 5106 is submitted to CBP, the data will be stored in ACE and will be protected by existing system security and is covered by the ACE System of Record Notice (SORN). CBP treats this information as business confidential and does not disclose this information except as provided for under its SORN.

### **Comment**

The proposed changes were vague and did not advise if a change in information would require

the filing of an updated 5106. If an importer has passport information on file and that information changes, is a new CBP Form 5106 required? If a company officer retires is the importer required to file a new CBP Form 5106? What change in proposed 5106 data elements would warrant the filing of an amended CBP Form 5106?

### **CBP Response**

Unless there is a notification of [Importer's number](#), [Application for Importer's Number](#), [Notice of change of the name or the address](#), CBP will not require the submission of new form for any changes in section 3 (Company Information). If the Importer of Record (IOR) has changes in block 1 (Name and Identification Number and IRS Number/SSN) or block 2 (Address Information), this will warrant the submission of a new CBP Form 5106. CBP will require the presentation of all of the information, if available, to have a complete CBP Form 5106.

### **Comment**

With regard to block 3J, officers of foreign importers of record would not have Social Security Numbers (SSNs) and may not have passports. Passports are not required for citizens who are not traveling overseas.

The revised CBP Form 5106 might mean that foreign shippers, shipping to numerous U.S. buyers will be forced to be shown as the importer of record and consignee at the time of customs entry when their U.S. buyers believe the information is intrusive and the buyers do not want to furnish it to CBP. There are importers of record, especially along the northern and southern borders, who are using warehouses as their "U.S. addresses". Other importers of record may use mail drops and secretarial service addresses.

### **CBP Response**

CBP cannot deny the importation for lack of information that is requested, but optional, in section 3 of the form, but information such as identity, Tax ID numbers and addresses in blocks 1 and 2 are [always](#) required.

The absence of other reportable data about companies or individuals will affect CBP's ability to fully understand the level of risk on subsequent transactions, and could result in the delay of the release of cargo or the delay in the processing a refund. CBP will require the presentation of all information and the completion of the rest of the data fields in the CBP Form 5106, if available. If all of the information needed to complete the CBP Form 5106 is not currently available, the information can be presented as an updated CBP Form 5106 at another time.

### **Comment**

It is also unclear from the Federal Register Notice who in the company would be required to store this information. Often, employees who store data are different than those individuals in the company who submit the importation information to CBP. This could lead to incorrect information submitted.

## **CBP Response**

The IOR is ultimately responsible for his/her import transactions with CBP, and whomever in the company is made responsible for maintaining that data is a business decision. Whomever the IOR gives his power of attorney to act on his behalf will also be accountable in addition to the IOR. The regulations regarding recordkeeping requirements (19 CFR Part 163) and procedures governing the maintenance, production, inspection, and examination of records still remain in effect.

## **Request for PII is an Intrusion without benefit**

### **Comment**

New personal data required is an intrusion without benefit. CBP proposes collecting very sensitive data under the proposal – social security numbers, passport information, personal e-mails, home addresses, etc. – but does not provide any information on how such data will be used. This request for personal information of private individuals acting in their official corporate capacity is inappropriate.

### **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. This effort will also expedite the flow of legitimate trade. IORs should consult the published ACE SORN that is published in the Federal Register and on the DHS website to read the routine uses of the collected information. These SORNs are updated on a periodic basis. <http://www.dhs.gov/system-records-notice-sorns>

### **Comment**

With regard to Block 3 of the CBP Form 5106, it is recommended that the sensitive company data not be required data elements when initially filing the 5106 Form. As a Customs broker, we are willing to collect some of the data elements for IOR requested in Block 3.

### **CBP Response**

The collection of the information on the CBP Form 5106 is the basis for identifying entities who wish to import merchandise into the United States, act as consignee, or who have other business with CBP that would involve the payment of duties, taxes, fees or other monies or the refund of same. This form is CBP's initial encounter with a new entity that is involved in an import transaction and is CBP's first opportunity to make an assessment of risk.

CBP has created a mobile application which will allow users to access the CBP Form 5106

through mobile phones and tablet devices. The mobile application will provide an alternative process for CBP to receive the new form along with the capability for the user to utilize a secure environment in which to present their PII to CBP. This mobile app is an alternative way that the IOR can provide the necessary data directly to CBP without going through a third party agent.

## **ACE Secure Portal /Mobile Application**

### **Comment**

The IOR should be granted a secure portal application to file the proposed privacy data element.

### **CBP Response**

CBP has the ACE secure portal which is a free, web-based access point designed to connect CBP, trade partners and Partner Government Agencies. The ACE secure portal is linked through EDI. The Electronic communication through EDI allows trade filers to receive faster decision responses for the movement of cargo. EDI is an electronic communication framework that provides standards for exchanging data via any electronic means. Through EDI, trade filers are able to electronically transmit import and export data to CBP. Filings transmitted through EDI link to all CBP systems, including the Automated Commercial Environment (ACE).

CBP has also created a mobile application which will allow users to access the CBP Form 5106 through mobile phones and tablet devices. The mobile application will provide an alternative process for CBP to receive the new form along with the capability for the user to utilize a secure environment in which to present their PII to CBP. Once the CBP Form 5106 is submitted to CBP, the data will be stored in ACE and will be protected by existing system security as well as the safeguards on the routine uses of records maintained in the system.

### **Comment**

Most sureties and customs brokers receive the information for CBP Form 5106 via e-mail and then submit this information with CBP Form 301 (Customs Bond). If the proposed changes are adopted, CBP would need to ensure these entities have the ability to transmit via a secure means and that CBP has a secure means to receive the data.

### **CBP Response**

CBP has the ACE secure portal which is a free, web-based access point designed to connect CBP, trade partners and Partner Government Agencies. The ACE secure portal is linked through EDI and the electronic communication through EDI allows trade filers to receive faster decision responses for the movement of cargo. EDI is an electronic communication framework that provides standards for exchanging data via any electronic means. Through EDI, trade filers are able to electronically transmit import and export data to CBP. Filings transmitted through EDI link to all CBP systems, including the Automated Commercial Environment (ACE).

CBP has created a Mobile Application for the CBP Form 5106 so that IORs who may have concern about their Personally Identifiable Information can transmit their own (PII) information via the Mobile application. This would eliminate sharing PII with a 3<sup>rd</sup> party agent such as a broker. The application is created on the Apple and the Android platform and is secure.

## **The agency's request for additional information is a burden to the trade and a duplicative effort**

### **Comment**

In the spirit of CBP's "one government at the border" strategy you should be aware that much of this information is already collected and vetted by a partner US government agency and dual information collection efforts by US government oversight agencies should seek to be reconciled rather than deferring the burden to the trade. At a minimum, it is proposed that the social security numbers of corporate officers should not be required, as this poses a security risk to the individuals.

### **CBP Response**

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. Although some of the additional information may reside with another government agency, this information is not readily available at the time of importation or at the time of submission of the CBP Form 5106. Also, CBP may not have an established Information Sharing and Access Agreement/ Memorandum of Understanding or any other sharing arrangement with the various government agencies; however, 19 CFR 24.5 does authorize the collection of the Social Security numbers (SSNs) on the CBP Form 5106 to identify the first time Importer of Record and implements CBP's authority to collect the taxpayers identification number and SSN as provided for in 31 U.S.C. 7701. During the import transaction itself, CBP and the PGAs are working toward the goal of achieving the "Single Window" where the importer only has to submit import data once through the PGA message set in the International Trade Data System which is ACE.

## **The Agency's Collection of Information is Excessive**

### **Comment**

While we understand CBP's security and protection mission, we do not believe that the proposed collection of information would be necessary or have practical utility and may compromise CBP's other objective of supporting trade. The breadth of excessive information gathering proposed in CBP Form 5106, does not bear any significant value to the validation and security process for participating entities.

### **CBP Response**

Although CBP is requesting additional information from the IOR in block 3J, 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 changes to the CBP Form 5106 will provide more comprehensive data on entities and to allow additional vetting and risk determination by CBP and to better facilitate transactions of legitimate trade.

## **Undue Burden on Trusted Trader Participants and CBP seeks to treat the importing community as a homogeneous unit**

### **Comment**

The proposal does not differentiate in any way between trusted traders, long-time importers, or new importers. However, even if the proposal distinguished the information that was required by type of importers (trusted trader, current and new importer), most of the pertinent information to make a risk assessment is already known to CBP. The proposal seeks to treat the importing community as a homogeneous unit; requiring the same information from all importers/ultimate consignees. If CBP is serious about using the information provided in the CBP Form 5106 to help form a risk profile, it should recognize that different entities present different risks and tailor its request accordingly.

### **CBP Response**

CBP does recognize the relationship that has been established with the long-time importer and the importers who are members of the partnership programs and have made allowances for those relationships. If you are an existing Importer of Record (IOR), who is currently in ACS/ACE, then you will be automatically grandfathered into the process but you will still be responsible for filling out the CBP Form 5106, under the provisions under 19 CFR 24.5, for a change of name and/or a change of address. However, if the IOR is currently an "active participant in good standing" in CBP's Trusted Trader Program(s) you must present the program code in blocks 1J thru 1M of the revised CBP Form 5106 and the information that is contained in Block 3 of the revised CBP Form will not be required. Instructions on the CBP Form 5106 will be redrafted to include the program codes.

## **Companies who have a current Form 5106 on file, many of whom CBP is well acquainted with, should be "Grandfathered" from the new requirement.**

### **Comment**

It is unclear whether importers with an active importer ID number will be required to file a new CBP Form 5106. According to CBP's regulations, once an importer has received an ID number they are not required to file a new CBP Form 5106 unless they have not completed an import over the last year. For that reason, we seek clarification whether importers that currently have an active importer ID number will be required to file the revised CBP Form 5106.

## **CBP Response**

Since the regulation 19 CFR 24.5 for the submission of the CBP Form 5106 has not changed, therefore, if you are an existing Importer of Record (IOR), who is currently in ACS/ACE, then you will be automatically grandfathered into the process but you will still be responsible for filling out the CBP Form 5106, under the provisions under 19 CFR 24.5, for a change of name and/or a change of address.

## **CBP should have consulted the Trade Community prior to the creation of this proposal.**

### **Comment**

We are concerned that CBP would propose such a significant change without first obtaining meaningful input from the trade community. It is not clear from the Notice to what extent (if at all) this proposal was reviewed with the Commercial Operations Advisory Committee (COAC) or other groups before publication. The proposal has clearly suffered as a result. We believe that CBP should have engaged with the trade community earlier in this process and that, if it had done so, a more acceptable/effective proposal could have been put forth.

## **CBP Response**

CBP does not agree with this comment, in that CBP has spent the last 3 years introducing and discussing the revisions to this Form with various entities of the Trade Community such as the Federal Advisory Committee on Commercial Operations of Customs and Border Protection (COAC), The National Customs Brokers and Freight Forwarders Association of America, Inc. (NCBFAA), the Northern Border Customs Brokers Association (NBCBA), the Pacific Coast Council (PCC), the Express Association of America (EAA) which includes (UPS, DHL, Fed-Ex and TNT).

This outreach was provided in order to give the trade community the opportunity to present their concerns as well as to present their recommendations. As a direct result of these discussions, it was suggested by the trade that CBP create an alternative means for the presentation of PII. It was the position of many customs brokers that they did not want to be responsible for the submission or the storage of the PII on behalf of their importer client. As a result of this suggestion, CBP did create the mobile application so that an employee of the Importer of Record company could submit the information directly to CBP without having to use their customs broker.

## **CBP's request for Company Officer's information who may have limited Business Knowledge.**

### **Comment**

Company officers – particularly for those of large corporations – do not typically handle day-to-day import activities. Rather, they rely on customs and import operations staff that has the appropriate and necessary business knowledge on such customs, importation and related matters.



Although company officers have legal authority to make decisions on behalf of the company, they are not acting in their personal capacities and they often defer to operational staff regarding decisions related to imports.

### **CBP Response**

CBP does not agree with this comment, in that CBP does not deem this as an unreasonable request. 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 in section 1 with respect to that knowledge.

### **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 in section 1 with respect to that knowledge. Again, this is optional, not mandatory.

## **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 Agency’s Proposal to Rename the CBP Form 5106 to "Create/Update Importer Identity Form".**

### **Comment**

U.S. Customs and Border Protection (CBP) has proposed to rename the CBP Form 5106 (5106) to "Create/Update Importer Identity Form".

### **CBP Response**

The current form is titled “Importer ID Input Record,” while the proposed form is titled “Create/Update Importer Identity Form.” The name of the CBP Form 5106 will be changed to read, “Create/Update Importer Identity Form” in order to make the form’s purpose clearer to respondents.

## **Burden Administratively**

### **Comment**

The proposal would impose an undue administrative burden on importers because of the new information requested, any change in company officer or any change in company personnel involved in importing would automatically trigger a new filing.

### **CBP Response**

CBP proposes to revise the CBP Form 5106 to gather additional information on the importer, consignee, or others who have elected to conduct business with CBP. The changes to the CBP Form 5106 will provide more comprehensive data on entities and to allow additional vetting and risk determination by CBP and to better facilitate transactions of legitimate trade; however, the regulation 19 CFR 24.5 for the submission of the CBP Form 5106 has not changed. Unless there is a [Notification of Importer’s Number](#), [Application for Importer’s Number](#), [Notice of Change of the Name](#) or the [Address](#), CBP will not require the submission of new CBP Form 5106.

### **Comment**

CBP must note the party that has historically provided this information, the broker, does not have a direct relationship with the “deliver to” or “sold to” party as they do with the IOR. As such, the additional information this not available today places a burden on the broker to obtain this information.

### **CBP Response**

Although CBP will require the presentation of all of the mandatory information and on the CBP Form 5106, if the IOR wants to provide it to the broker, if available. If all of the information needed to complete the CBP Form 5106 is not currently available, the information can be presented as an updated CBP Form 5106 at another time.

## **Mobile Application (Automated Collection Techniques)**

### **Comment**

If CBP pursues the development of an 'app' it must have significant security features built into it to tie to the correct 5106 record, and to ensure the party accessing the data has the authority to update the record. CBP could initiate an email to that address, providing that individual with a link to update Section 3 information. The use of automated collection techniques would also minimize the burden of submitting information just as long as the data provided can be adequately protected.

### **CBP Response**

CBP has created a mobile application which will allow users to access the CBP Form 5106 through mobile phones and tablet devices.

A secure process has been developed in that an e-mail address must be provided to CBP via the app before the user is allowed to proceed and any data entry can occur. CBP will issue a one-time PIN good for 24 hours to the e-mail provided. Data entered on the device will be protected by this PIN. Three attempts to access the data without the correct PIN will clear all fields in the app. Fields will be cleared after 24 hours if not sent to CBP. The PIN will be required to send data to CBP. Once data is sent to CBP, all fields will be cleared. Once submitted to CBP, the data will be stored in ACE and will be protected by existing system security. Data is only sent one way, no data or PII is ever sent from CBP to the device. The new elements of Company Information and Company Officers can be added to an existing IOR record in ACE as needed. Additionally, new IORs created exclusively via the app will allow address and other updates from the original user.

### **Comment**

It was discussed that CBP will develop an 'online' or mobile application, allowing a corporation to provide the sensitive data required in Block 3. It is proposed 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 CBP Form 5106. We recommend the initial 5106 be filed via ABI by the licensed Customs brokerage firm or an authorized surety company. Customs could then create a unique identifier provided to the broker who may then forward the unique identifier to the appropriate party permitting it one-time access to input confidential, via a secure online application.

### **CBP Response**

CBP cannot mandate that an Importer of Record (IOR) obtain a broker for the use of his/her

Customs business; therefore, CBP cannot legally or indiscriminately provide the IOR's information to a broker unless the IOR has provided CBP with prior authorization, Power of Attorney (POA).

It should also be noted that the Mobile Application was created by CBP at the behest of the broker trade community, in that they did not want to be responsible for the input or the storage of PII.

### **Comment**

In our opinion, the ACE Web Portal was never intended to be utilized by all importers bringing goods into the United States; however, for those experienced importers who have ACE portal accounts, an ACE tool could be utilized to manage the 5106 data that CBP has on file for them.

### **CBP Response**

CBP has created a mobile application so that members of the public or companies can update Importer of Record information in ACE without the use of a Portal account in a secure environment.

The mobile application will not accept data if the EIN has an existing portal account. An existing EIN without a Portal account can use the mobile application to submit business information and officer information. If the IOR was created with the mobile application, updates for the address and name can be updated through use of the mobile application, only if using the original e-mail used at the time of creation.

### **Comment**

If the broker is required to obtain the PII in order to complete the CBP Form 5106, the broker will then be responsible for protecting this information of personal data for the importer as well. This could be a burden to the broker as well as an issue for the officer of the company to expect the broker to keep this information confidential.

### **CBP Response**

CBP has created a mobile application at the behest of the Trade Community, in that the brokers did not want to be responsible for the input or the storage of their clients' PII. By regulation, 19 CFR 111.24, a broker is already required to keep the information of their clients confidential so there is no change in this responsibility.

## **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.

## **Consignee/Ultimate Consignee**

### **Comment**

CBP has already performed their risk assessment based on the name/address of the consignee, we believe CBP should not require the consignee identifier information on the entry summary, unless the value of goods for the individual consignee exceeds \$2,500.

### **CBP Response**

Since CBP has not made any changes to the regulation or policy regarding the Informal Entry Process, CBP will not address the consignee identifier information or the reporting rules for the value of informal entry, at this time.

### **Comment**

If the CBP Form 5106 will continue to be used for the submission of consignee information the Trade Community would like CBP to clarify, absent a Power of Attorney for the company in question, by whom and under what authority can an electronic 5106 be added to ABI. CBP also needs to clarify WHAT name & address is to be added - the corporate name & address associated with the IR/EIN or the branch office added for CBP release purposes.

### **CBP Response**

Since CBP has not implemented any changes to the regulation (19 CFR 24.5) governing the use of the CBP Form 5106, the current regulation and any policy regarding the submission of the electronic transmission of the 5106 as well as the submissions of the consignee information will remain in effect. CBP is authorized to collect this information whether in paper or in electronic form under the approved OMB No. 1651-0064. The corporate name and address that is associated with the IORN that is listed in section 1 is what should be presented to CBP.

### **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**

CBP should add definitions in the instructions for "Importer of Record" and "Consignee or Sold to Party" to assist the Trade Community in understanding what the selection means.

## **CBP Response**

CBP has not implemented any changes to the regulations or policies governing the definitions of both the "Importer of Record" and "Consignee" and since the definitions of both of these terms are readily available to the Trade Community through various resources, CBP does not deem it essential to inundate the form with information that is readily accessible. See 19 U.S.C. 1484; 19 CFR Part 141; and Customs Directive 3530-002A on "Right to Make Entry".

## **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.

## **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.

## **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.

### **CBP-Assigned Number**

#### **Comment**

It is recommended that the licensed customs brokerage firm should be the party who requests Customs Assigned Numbers, preferably through ABI ACE (not a mobile application). CBP licenses and regulates customs brokerage firms, and they are a known entity.

### **CBP Response**

Regulations or procedures regarding the requisition of a CBP-Assigned Number is not being revised at this time and CBP cannot mandate that an importer utilize a broker to conduct his/her Customs business.

#### **Comment**

The form instructions for the CBP-Assigned Number are not clear: Does the party who checks Block 1E ("I have a SSN, but wish to use a CBP-Assigned Number on all my entry documents") still have to provide their SSN in 1B to obtain a CBP-Assigned Number? We would presume they do not, but the instructions should provide guidance.

### **CBP Response**

The answer to this question is yes. The party who has an SSN, but wishes to use a CBP-assigned number on all of his entry documents must provide his SSN to CBP on the CBP Form 5106. CBP will need this information in order to provide CBP with improved awareness regarding the importers and/or the consignees who have chosen to conduct business with CBP. The purpose of the CBP-assigned number is to protect the individual's SSN from appearing on entry documentation and thereby reducing the possibility of identity theft. Instructions on the CBP Form 5106 will be redrafted to prevent confusion.

#### **Comment**

It is recommended that CBP update their methodology to assign CBP-Assigned Numbers, so the trade community is able to separate Non-Resident Importers of Record (who currently utilize CBP-Assigned Numbers) from those individuals who wish to use a CBP-Assigned Number in lieu of their Social Security number.

## **CBP Response**

A Non-Resident Importer of Record would not have a Social Security Number so Section 1 would be left blank and CBP would assign a CBP number for the Non-Resident IOR's use. On the other hand, a U.S. citizen or Legal Permanent Resident would be required to enter his SSN in Block 1 even though he wishes to use a CBP-Assigned Number in lieu of the SSN for all of his future import transactions.

## **Waivers for Express Couriers**

### **Comment**

CBP has said that the information, the full information, will be required from both importers of record and the consignees. The "express couriers" will no doubt want a waiver for their consignees. They act as the nominal "importer of record" on most of their customs entries. The requirement should be the same for all importers and consignees no matter how their goods are shipped.

### **CBP Response**

Under 19 CFR 24.5, any person, business firm, Government agency, or other organization is required to file CBP Form 5106 with the first formal entry submitted or the first request for services resulting in the issuance of a bill or refund check upon adjustment of a cash collection. This requirement extends to the ultimate consignee for which the entry is being made; however, as stated in the instructions on the proposed revised CBP Form 5106, "If you are submitting this document as a consignee to the import transaction, sections 1 and 2 must be filled out completely".

CBP is not aware of a waiver but the proposed revisions of the CBP Form 5106 has been discussed at length and socialized through various trade entities for the past 3 years. Typically, a lot of these shipments are deemed low risk and low value shipments and ultimately the information that CBP is requesting from these entities is sufficient in order for CBP to make an assessment of risk.

## **EIN Two-Digit Suffix**

### **Comment**

Since CBP has stopped using the 2-digit to the EIN, the 11-digit numbers have not been removed from CBP records. The legacy "5106 file" utilized by CBP for positive identification of parties to the import transaction is overwrought with Federal ID numbers erroneously filed over time with a two-digit suffix. It is felt that the use of the 2-digit suffix is not useful and obsolete and should be removed from CBP records.

### **CBP Response**

CBP is not in agreement with your comment. The regulation 19 CFR 24.5 for the submission of



the CBP Form 5106 has not changed. As per 19 CFR 24.5(d), Optional additional identification, CBP Form 5106 contains blocks for a two-digit suffix code which may be written in as an addition to the Internal Revenue Service employer identification number to provide optional additional identification.

At this time, CBP has not recommended any proposed changes to the regulations governing the use of this form; however, CBP has incorporated system upgrades, edits and reports into ACE that will improve the data quality in the Importer of Record Table.

## **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.

## **International Trade Data System ("ITDS") Program**

### **Comment**

As the International Trade Data System ("ITDS") program is implemented, the number of government agencies having access to information submitted by Exporters and Importers will grow significantly, and with that the risk that an individual's personal information could be accessed in error, misplaced, or misused.

### **CBP Response**

The data on the 5106 form is for CBP purposes only, and it is not part of the "PGA message set" as this form is not an entry/entry summary that is shared with PGAs. Except for the Importer's name and either the IRS, EIN, TIN, or the CBP-assigned number that appear on the electronic equivalent of an entry/entry summary (ACE cargo release), the other information on the CBP Form 5106 remains within CBP. A CBP-Assigned number, the EIN, or TIN that appears on the entry summary will be the only information from the CBP Form 5106 that is shared with the PGAs from the entry documents.

## **Movable and Non-Movable Assets**

## **Comment**

CBP should require applicants to identify both movable and non-movable assets located in the United States. Such information could allow CBP to seize the assets of any importers attempting to evade the payment of antidumping and/or countervailing duties.

## **CBP Response**

The commenter's recommendation goes beyond the purpose of the CBP Form 5106 which is to simply identify who the Importer of Record (IOR) is for CBP's purposes, that is, is this IOR a valid person or shipper (that is, a corporation, an individual, a non-U.S corporation, a government agency, or a legitimate organization)? Accordingly, assets are outside the scope of the proposed revision to this form.

## **Continuous Bond**

### **Comment**

There is a note in the Type of Action section which states "if a continuous bond is on file, a rider must accompany this change document." CBP should review the inclusion of this statement in light of the anticipated regulations support e-Bond. In the E-Bond environment, there is no longer a need for the name Change and address Change riders.

### **CBP Response**

The e-Bond test pilot program is in effect in which 90% of the customs bonds are now being filed which removes the need for a rider to accompany the CBP Form 5106; therefore, language for the inclusion of the rider on the revised form will be removed. Please note that the CBP regulations of Part 113 will need to be amended to reflect the use of electronic bonds after the test pilot of e-bond is concluded.

### **Comment**

It is suggested that the purpose of the 5106 form is to identify a location/suffix to be included on a customs importer bond. It is extremely important that this document be on file with Customs as soon as possible or risk a bond insufficiency or that the shipments will not clear CBP timely. It is also suggested that much of the information requested would be better utilized if it were a part of an initial bond application rather than the CBP Form 5106 which is more of an addendum to the actual bond.

### **CBP Response**

The Importer ID Input Record (CBP Form 5106) is part of the basis for establishing bond coverage, release and entry of merchandise, liquidation, issuance of bills and refunds and processing of drawback actions. The CBP Form 5106 is CBP's initial encounter with a new entity that is involved in an import transaction and is CBP's first opportunity to make an assessment of risk. The changes to the CBP Form 5106 will provide more comprehensive data

on entities and to allow additional vetting and risk determination by CBP and to better facilitate transactions of legitimate trade.

CBP will not address any comments regarding the revision of the CBP Form 301 (Customs Bond) at this time as this is beyond the scope of the revision to the CBP Form 5106.

## **Broker Validation**

### **Comment**

When an importer of record (IOR) is required to complete the CBP Form 5106 as a notification of identification number (type of action field), it is suggested that CBP allow the broker, as a validation party of the information received and agent of the IOR, to provide the information available at the time of import to satisfy admissibility of the goods. This information should align with previous 5106 data elements to allow the filing of entry and entry summary with CBP.

### **CBP Response**

Since CBP has not implemented any changes to the regulations governing the use of this document and the Importer of Record is ultimately responsible for his import transactions, it is also the IOR's right to provide the power of attorney to the broker to act on his behalf when filing the CBP Form 5106. CBP cannot mandate that an IOR use of a broker for any of his/her transactions with CBP.

### **Comment**

CBP should consider notifying the original filer of the CBP Form 5106 that there has been a change in the Block 1 and 2 data field. This would greatly assist the brokerage filer in maintaining current records as well as provide a review mechanism that may recognize when an identity has been stolen or a record has been improperly changed. This feature should only be provided for importer of record data, not consignee/sold to party data.

### **CBP Response**

The goal of CBP's revision of the CBP Form 5106 is to better reflect modern and efficient trade practices, and to encourage brokers to be force multipliers for CBP's trade facilitation efforts. As a component of this effort, CBP would like to maintain the relationship between CBP and the Importing Community by maintaining the integrity of their transactions within CBP. The requested feature would not support these efforts. CBP cannot release the Importer of Record Customs transactions to any trade entity or individual without the IOR's authorization; therefore, CBP is not in agreement with this comment.

### **Comment**

When individual shipments are valued less than \$2,500 (informal Entry), the Customs Broker reports the name/address of the sold to/deliver to party. It is proposed 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 the address.

### **CBP Response**

CBP Form 5106 does not have any data fields regarding “sold to” or “deliver to” party. The purpose of the CBP Form 5106 is to provide CBP with improved awareness regarding the importers and or the consignees who have chosen to conduct business with CBP. The current regulation and any policy regarding the informal entry process is outside the scope of the revision to the CBP Form 5106.

### **Comment**

While less sensitive in nature, we are also concerned by the proposed inclusion of the broker name, broker telephone number, and primary banking institution. That information is frequently subject to change, and filing updates to keep the information current on CBP Form 5106 could pose a significant administrative burden for importers without justification for why it is required.

### **CBP Response**

Neither the regulation 19 CFR 24.5 nor the CBP Policy for the submission of the CBP Form 5106 has changed. The regulation states that, any person, business firm, Government agency, or other organization is required to file CBP Form 5106, for [the Notification of Importer’s Number or Application for Importer’s Number or Notice of Change of Name or Address](#).

The change of the existing brokerage’s name, telephone number or the name of the primary banking institution does not fall within the parameters of the regulation and will not require the submission a new CBP Form 5106.

### **Comment**

It is unclear if customs brokers who obtain companies' information before products are exported to the United States will be required to file a new Form 5106. If so, it could delay U.S. imports.

### **CBP Response**

Since CBP has not implemented any changes to the regulations governing the use of this document, any regulations pertaining to the submission of the CBP Form 5106 or the importation process will remain in effect. A customs broker can always make the entry for the new client under the broker’s filer code and bond if the broker is concerned with a delay in the processing of importations of his new client.

### **Comment**

With regard to Block 3F of the revised CBP Form 5106, it seems odd that legally separate entities may be reported on one 5106 record. Would the broker be held accountable for incorrect information provided by the Importer? If so, we are absolutely opposed to providing this, as we would have no way of knowing this information. It is felt that specific language should be placed in the regulations stating that brokers would not be held accountable for the quality or

quantity of this information as provided by the "new" importer.

### **CBP Response**

The regulation regarding the submission of the CBP Form 5106 has not changed. As per the regulation, the Importer of Record is ultimately responsible for his Customs transactions. It is also stated in the heading of the (revised) CBP Form 5106 “As the importer, consignee, or other party listed in block 1, you are responsible for the validity of the information provided in this document. Any Customs Broker or third party who is submitting the information on your behalf is only obligated to convey this information to Customs and Border Protection (CBP).”

Since this data element is not a new element to this revised form but is currently an element on the existing form, CBP would not hold a broker liable for the incorrect information provided by the importer in this context. As a “force multiplier” for trade compliance, CBP would hope that the broker would know something about the importer with whom he has established a business relationship and with whom he has an executed power of attorney.

### **Comment**

CBP should consider notifying the original filer of the CBP Form 5106 that there has been a change in the Block 1 and 2 data filed. This would greatly assist the brokerage filer in maintaining current records as well as provide a review mechanism that may recognize when an identity has been stolen or a record has been improperly changed. This feature should only be provided for importer of record data, not consignee/sold to party data.

### **CBP Response**

CBP cannot mandate that an Importer of Record (IOR) obtain a broker for the use of his/her Customs business; therefore, CBP cannot legally provide the IOR’s information to a broker unless the IOR has provided CBP with prior authorization.

### **Comment**

It is suggested that CBP should not allow changes or updates to the CBP Form 5106 without collecting detailed information about the party submitting the changes.

### **CBP Response**

CBP is concerned with cultivating and securing lawful International Trade and although, the collection of data on the individual who is submitting the changes to the CBP Form 5106 may be informative, this effort will not provide CBP with improved awareness regarding the importers and or the consignees who have chosen to conduct business with CBP.

### **Comment**

The requirement to provide a broker and broker telephone number also seems irrelevant and could change periodically. Some importers use multiple brokers for various business reasons so indicating one broker when they in fact may use more would be a burden.

## **CBP Response**

The Importer of Record or whomever he or she has given a power of attorney to act on his behalf, has always been responsible for signing the certification on the CBP Form 5106. This is not a new data element and is not an unreasonable request.

Since the regulation for the submission of a CBP Form 5106 (19 CFR 24.5) has not changed, the periodical changes to the broker's name or the broker's telephone number would not result in the submission of a new CBP Form 5106.

## **Comment**

There may be a concern by customs brokers that furnishing CBP with importers' email addresses and phone numbers would encourage CBP to reach out directly to importers to tell importers to deal directly with CBP and bypass customs brokers. This created a major problem for customs brokers for some time with many clients. CBP might also use the information to invite importers to "special events" that feature specific customs broker competitors. This goes far beyond CBP needing the information to contact an importer on a specific transaction or transactions. Customs brokers may be hesitant about importers providing their email address and phone numbers to CBP.

## **CBP Response**

CBP is not in agreement with this comment, in that CBP has other resources that can be utilized in order to obtain an email address and phone number for an Importer of Record, if needed; however, it is CBP's belief that with the emergence of technology and the fast paced advancements in innovation that it is absolutely crucial that we request the Importer's contact information (email and phone number). Having this information would work against identity theft in some situations.

## **Partnership Government Agencies (PGAs)**

### **Comment**

Please confirm that CBP-Assigned Numbers will be accepted by Partner Government Agencies (PGA), for U.S. entities as well as non-resident Importers of Record. We are particularly interested to know whether the U.S. Food & Drug Administration will accept this alternate identifier.

### **CBP Response**

The CBP-Assigned Number is utilized by both U.S. entities and non-resident Importers and is used by CBP to identify the Importer of Record. The electronic entry information is presented to the PGA from CBP. The CBP-Assigned Number is an identifier which is included in the entry information and is accepted by the FDA as well as by the other Partner Government Agencies.

## **Comment**

A review of the data elements in the proposed CBP Form 5106 raises the question of whether mismatches will occur when information is also provided to PGA's. Information filed on PGA forms may require different destination data. It is recommended that the data requested be harmonized with the other governmental agencies for which Customs acts as enforcement gatekeeper.

## **CBP Response:**

CBP has made all of the appropriate upgrades to ensure that the revisions to this document are compatible in the ACE environment.

## **“Bona Fides”**

### **Comment**

Block 3G (Primary Banking Institution), Brokers are generally not upset about this provision but it should be tied directly to the "bona fides" of the importer. Since the banks are required to engage in strict vetting processes for new business accounts, if we are providing the banking information it should then suffice to remove the data collection requirements that are shown in blocks 3H (Certificate or Articles of Incorporation, Locator ID), 31(Certificate or Articles of Incorporation, Reference Number), and 3J (Company Officer Information). It is truly duplicative of efforts already undertaken by the financial institution.

### **CBP Response**

The request for the banking information that is contained in block 3G, will allow CBP to better assess reports of suspicious financial activity required by the Bank Secrecy Act and the financial solvency of unknown importers.

The regulation and any policy regarding the “bona fides” will not be addressed at this time; however, any questions regarding “bona fides” can be emailed to the Brokers Management Branch, [brokermanagement@CBP.DHS.GOV](mailto:brokermanagement@CBP.DHS.GOV).

## **ABI Rejection**

### **Comment**

It is recommended, if an importer upon subsequent importations fails to submit the requested identity information to align with the proposed CBP Form 5106, that CBP initiate an ABI reject in ACE prohibiting importation until the importer files this required privacy information. It is recommended this ABI message be similar to the current importer on sanction ABI message.

### **CBP Response**

Information such as identity, Tax ID numbers and addresses are always required; however, the absence of other reportable data about companies or individuals will affect CBP's ability to fully understand the level of risk on subsequent transactions, and could result in delay of release of cargo or delay in the processing a refund.

## **Encrypted Numbers**

### **Comment**

The CBP query function which allows a Customs broker to obtain an encrypted number should be upgraded, taking advantage of search technology advancements. A better query function and the ability to utilize an encrypted number in lieu of an EIN number at time of entry release or entry summary could prevent numerous 5106 records from being built for the same entity.

CBP should continue to allow for the use of encrypted numbers (obtained by the Customs broker utilizing an ABI query) to identify a consignee at time of entry release. CBP should change their policy and allow for the use of the encrypted number at time of entry summary, and should not require the Customs broker to contact the consignee to obtain a number that is already in CBP's system.

### **CBP Response**

CBP will continue to allow for the query and use of encrypted IOR numbers. No other changes are planned for query enhancements or the expanded use of encrypted numbers.

## **Non-Resident Importers**

### **Comment**

The Internal Revenue Service (IRS) does allow a non-resident entity who conducts business in the United States to apply for an IRS or Employer Identification Number (EIN). We believe CBP should allow these non-resident entities to utilize their EIN number in lieu of a CBP-assigned number.

### **CBP Response**

Since a non-resident entity cannot have an IRS or EIN number, the only number available to this IOR is a CBP-Assigned number. Accordingly, the current regulation and policy regarding the non-resident entities remains in effect.

### **Comment**

If CBP's concerns are in regard to non-resident importers, identifying new importers and performing risk assessments on those new entities, we suggest amending the non-resident importer regulation and adding additional requirements without burdening established importers.



It is suggested that CBP create a risk-based approach instead, working with individual companies when issues arise and seeking information in that manner. It also suggested that CBP request if the company has been importing for less than a year, and if so, then CBP should proceed to request provide additional information regarding their managers, but not requiring it for companies who have been importing for more than a year.

### **CBP Response**

CBP has always utilized a risk based approach based on trade entities who are known to CBP and have established importing history versus the New Importer who is an unknown entity. All unknown entities including resident or non-resident importers are considered a risk.

The regulation regarding the submission of the CBP Form 5106 has not changed; therefore, the current regulation and any policy regarding the non-resident importer will remain in effect, at this time.

## **Comments on Data Elements**

### **Comment**

Why is CBP collecting a Dun & Bradstreet number, and what if I don't have one or don't want to report it?

### **CBP Response**

The Data Universal Numbering System (DUNS) number is a universal business identifier which will be used to assess financial and supply chain risk. The DUNS can establish legitimacy for new importers based on the company's current and historical business information. In addition, with CBP shifting the processing of entry/entry summaries from the port of entry to the Centers of Excellence and Expertise (CEE), a DUNS number may help CBP in assigning the new IOR to one of the ten industry-based CEES. The absence of a DUNS number will not impact the processing of this form.

### **Comment**

It is felt that the NAICS (North American Industry Classification System) Code is not valuable or pertinent to CBP's mission. In many cases an importer may have multiple lines of business, with different markets and strategies organized around divisions that would not be captured via this collection. We would suggest this be removed or - at the least- made optional given its known limitations. How would it apply for foreign corporations?

### **CBP Response**

CBP does not require the presentation of all of the requested information, but if this information is available and known to the IOR, CBP would like the IOR to provide it because this data element (NAICS) will be used to make an assessment of risk and also as a vetting tool. Please note that if the IOR is a foreign corporation, the NAICS Code data field should be left blank.

### **Comment**

Why is CBP collecting Certificate or Articles of Incorporation for both U.S. and foreign entities in blocks 3H and 3I?

### **CBP Response**

The submission of the Articles of Incorporation will help CBP to further establish the identity of a company.

### **Comment**

Why is CBP collecting the name of a primary banking institution?

### **CBP Response**

This banking information will allow CBP to better assess reports of suspicious financial activity required by the Bank Secrecy Act.

### **Comment**

In block 3E (year in which the IOR's company was established), clarification of this data element is requested. It may be beneficial, to request the year of incorporation, as an option for legal entities. At a minimum this request should be directed solely to the party referenced in block 1 (A).

### **CBP Response**

All of the information that is being requested in block 3 including 3E (Year Established) is directed solely to the business party, that is, the Importer of Record, referenced in section 1, as provided in the instructions for block 3 ("Company information is the named business entity referenced in block 1").

CBP is also requesting the Certificate or Articles of Incorporation (Locator I.D. and Reference Number) in blocks 3H and 3I of the revised form.

### **Comment**

In block 3G, the CBP Form 5106 attaches to a bond that is underwritten, and supported, by a Surety. The bonding company is providing the collateral that guarantees the bond is able to respond to fines and penalties when the Principal does not meet its payment obligations. Further, providing banking information, especially bank routing numbers, which would be maintained and recorded by CBP would increase the potential for fraudulent actions against the importer should this information be obtained through cyber-attacks aimed and the trade does not see a valid benefit in providing the banking information requested given the bond is supported by a

licensed, financially viable, bonding company.

### **CBP Response**

CBP does not agree with this comment because the Importer ID Input Record (CBP Form 5106) is the underlying basis by which a party establishes an account with CBP to import into the United States. CBP has a right to know, for business purposes, the IOR's primary banking institution for the purpose of the issuance of bills, the collection of the proper duties, fees, and other charges. This information will also be used for exactions as well as for the issuance of refunds, the processing of entries and other processes such as drawback actions.

The changes to the CBP Form 5106 will provide more comprehensive data on entities and to allow additional vetting and risk determination by CBP and to better facilitate transactions of legitimate trade. This banking information will allow CBP to better assess reports of suspicious financial activity required by the Bank Secrecy Act.

### **Comment**

In block 3H, the Trade respectfully requests that CBP be more specific as to exactly what identification number it is requesting. Please provide clarification or confirmation that the corporate identification number assigned by the Secretary of State for the entity filing the CBP Form 5106 will suffice for this purpose.

### **CBP Response**

Many states have different alpha and numeric configurations to identify the articles of incorporation (Certificate of Incorporation or the Corporate Charter). The information that is being requested in block 3H, is the Locator identification number, which was provided by the governmental agency (typically, the Secretary of State) in the State in which your company was incorporated.

### **Comment**

Since there are parties other than Importers of Record, Consignees, Drawback Claimants, etc. who will utilize this form, we recognize that these parties could be identified utilizing the block marked "Other." Would CBP benefit from adding additional Role selections to the form? If so, we suggest:

- Transportation Carrier
- Licensed Customs Brokerage Firm\*
- Container Freight Station\*
- Commercial Warehouse/Foreign Trade Zone Operator\*
- Container Examination Station\*
- Deliver to Party

### **CBP Response**

CBP does not agree. The form is too long as it is and it is easy for a party to complete what kind

of entity they are in the “other” data field. CBP would not benefit from adding these additional roles to the form.

### **Comment**

It is not clear in what instance an individual or company would select the block option 1H "I do not intend to import" and we would appreciate clarification in the instructions on the use of that option on the CBP 5106 form.

### **CBP Response**

In block 1H, the option of “I do not intend to import”, is an option that is being provided for the one-time importer who may not have any intentions to import in the future or if this is the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This option will provide CBP with an assessment of risk as well as whether this new importer will need to be assigned an account manager.

### **Comment**

It is recommended that the data ranges in 1H be changed or modified as follows: Ranges appear to be too small. Suggest the ranges should be 1-5 per year, 6-100 per year, 101 or more per year; Clarify in the instructions that the Importer of Record must select one of the data range boxes (1-5, 6-100, 101 or more); Clarify in the instructions that the infrequent personal shipper should only check a single box, likely 'infrequent personal shipments'.

### **CBP Response**

CBP does not agree with this comment. The proposed changes are not conducive to CBP’s future efforts in the areas of the ACE redesign and the Importer of Records’ new vetting process and new targeting framework. The purpose of Block 1H is to further identify how often the IOR will intend on importing within a given year.

### **Comment**

In block 2 of the form, which covers the mailing address in block 2A, the form is requesting an ISO code. The ISO code for countries are not often recognized by the Post Office. Too often the mail is returned to U.S. Customs and Border Protection (CBP) as undeliverable when the country of destination is not clearly spelled out on the envelope. This problem for foreign importers of record in that the Revenue Division will make an importer’s bond inactive if it receives mail back as undeliverable. The form should request an actual country name in block 2A for the mailing address.

### **CBP Response**

The revisions to this document will only affect the data collection from the IOR and will not change or modify the current automated system which regulates CBP’s mailing system; therefore, CBP cannot respond to this comment, at this time.

In the future, as all of CBP become fully electronic, the mailing out of bills or refunds to physical addresses may be replaced with electronic addresses. At that time, CBP Form 5106 and its electronic equivalent, will be updated, to reflect operational practices.

### **Comment**

It is suggested that block 2A, Mailing Address, and block 2B, Physical Location Address, be reversed and that Physical Location come before Mailing Address and, if the two addresses are the same, a block be added to allow for automatic completion of the Mailing Address. This saves data entry time and possible data entry errors.

### **CBP Response**

CBP is cognizant that re-entering the same address could cause inadvertent errors. That is why the instructions for Block 2B for Street Address 1 provides, if the mailing address (2A) and the physical address (2B) is the same address, then the physical address in Block 2B should be left Blank.

The purpose of Block 2 is to further identify the nature, business structure and characteristics of a company. The proposed switching of the order of Blocks 2A and 2B are not conducive to CBP's future efforts in the areas of the ACE redesign. Please note that, in the future, as all of CBP become fully electronic, the mailing out of bills or refunds to physical addresses may be replaced with electronic addresses. At that time, CBP Form 5106 and its electronic equivalent, will be updated, to reflect those operational practices.

### **Comment**

The Block 3, Company Information, states that "...all of the requested information is required if available"; but, what is "if available"? What if the importer has the information but the importer does not want to furnish it to CBP? Can the customs entry go through? What if the information is incorrect? While CBP may say that the lack of information may trigger customs exams, the fact is, for new importers, the first shipments are probably small shipments and would be examined anyway; thus, there is not much of a penalty.

### **CBP Response**

CBP cannot deny the importation for lack of information or false information that is requested in block 3 of the form, but information such as identity, Tax ID numbers and addresses are always required. The absence of other reportable data about companies or individuals will affect CBP's ability to fully understand the level of risk on subsequent transactions, and could result in delay of release of cargo or delay in the processing a refund. CBP will require the presentation of all of the mandatory information; however, the completion of the entire CBP Form 5106, if available, is CBP's preference.

CBP's definition of "if available" is for the party to provide all of the information that is readily

available or accessible to the IOR at the time of presentation of the CBP Form 5106. If one does not have all of the information needed to complete the CBP Form 5106, additional information can be presented as an updated CBP Form 5106 at any time. Again, missing information in the mandatory data fields could result in delay of release of cargo or delay in processing a refund. Knowingly providing false statements to the government could result in penalties under 18 U.S.C. 1001.

### **Comment**

In Block 3A, CBP should specify that the brief business description must state whether the importer intends to import goods subject to AD/CVD orders. The agency may also wish to obtain information specifying whether an importer intends to bring in goods subject to quota, or to regulation by agencies such as the U.S. Food & Drug Administration, U.S. Environmental Protection Agency, or U.S. Department of Agriculture.

### **CBP Response**

The CBP Form 5106 will be processed as an account specific document, in that CBP will make an assessment of risk based on the IOR as an account. Specifications such as AD/CVD is considered a transaction driven factor which may fluctuate depending on the shipment. Unlike importations subject to regulations by other federal agencies, AD/CVD type of entries have an associated revenue-risk with them as to the applicable duty rates that may not be determined for years after importation. CBP has an interest to ensure a proper bonding level so that it can collect on outstanding bills.

### **Comment**

The trade community would like to suggest that the role of the party to be reported be utilized as the basis for determining the amount of the information to be collected on the revised form by CBP:

- Consignee (or Sold to Party): should be required to fill out Sections 1 and 2 only
- Importer of Record - should be required to fill out Sections 1 and 2, Section 3J optional (Some fields in Section 1 and 2 may be left blank if not applicable).

### **CBP Response**

CBP will utilize the trade entities current business relationship with CBP as the basis for determining the amount of the information that will be requested. If you are an existing Importer of Record (IOR), who is currently in ACS/ACE, then you will be automatically grandfathered into the process, but you will still be responsible for filling out the CBP Form 5106, under the provisions under 19 CFR 24.5, for a change of name and/or a change of address. However, if the IOR is currently an “active participant in good standing” in CBP’s Trusted Trader Program(s), the information that is contained in Block 3 of the revised CBP Form will not be required.

Since CBP’s assessment of risk for importers will be based on the importers established business

relationship (account based approach), CBP has made the adequate policy decisions based on those relationships. There are policy decisions for the existing IOR, Consignees/Ultimate Consignees and for the IOR who is a current participant in CBP's Trusted Trader Programs.

### **Comment**

In Block 3H, it is recommended that the term 'locator ID' should be changed to State Code or ISO code. We do not believe 'locator ID' is a good descriptor to be used on the form itself.

### **CBP Response**

CBP does not agree with this comment. The instructions for this element are clear and concise.

### **Comment**

In Block 3J, CBP should require the applicant to identify, for each company officer listed, the names of all other companies in which the individual has served or currently serves as an officer. This information would further enable the agency to meet the goals of Section 221 of H.R. 6642, as well as facilitating proper bonding and collection on outstanding bills. For each such company listed, the individual should provide:

- The importer identification number, if any;
- The current status of the company, i.e., whether the company is currently operational, filed for bankruptcy, or has otherwise ceased operations; and
- The nature of the company's operations, and, if engaged in importing product into the United States, the type(s) of product(s) imported.

### **CBP Response**

CBP believes that the additional information that is currently being requested from the IOR, will be sufficient information to provide CBP with the ability to make an informative assessment of risk and will enable the agency to meet the goals of the section 221 of HR 6642 (Importer of Record Program).

### **Comment**

It is important to identify what data elements are required (mandatory) versus optional, with the understanding that there should be only the very basic information should be required or mandatory. We believe that CBP should utilize the available information to make admissibility decisions and that the role of the party being reported should be considered in CBP's risk assessment methodology.

### **CBP Response**

CBP agrees. Wherever the instructions say, if available, that means those data elements are optional. Also, there are certain data elements that are not applicable to foreign corporations and those data fields can be left blank. The mandatory data fields are in Blocks 1 (Name and

Identification Number) and 2 (Address Information). Most of the data elements in Block 3 are of public record such as date of incorporation, articles of incorporation, NAICS, DUNS number, filer code number etc. that the party should be able to complete those elements. The more information provided by the Importer of Record on the CBP Form 5106, the better CBP is able to vet the identity. If the requested information is not available, CBP provide instruction that the fields are to remain BLANK.

## **Miscellaneous Comments**

### **Comment**

What is the obligation of the IOR to maintain the 5106 information filed with CBP?

### **CBP Response**

The IOR is ultimately responsible for his/her import transactions with CBP. It makes sense that the IOR would want CBP to have the most up to date information. If the IOR goes through a merger and becomes a new company or a new division, this change in business structure and corporate officers should be reported to CBP. There are legal obligations such as recordkeeping requirements (19 CFR Part 163) and procedures governing the maintenance, production, inspection, and examination of records which will continue to apply to all IORs.

### **Comment**

The Trade Community would like to know how many 5106 records placed on file are duplicates. We recommend CBP take steps to prevent duplicate records.

### **CBP Response**

CBP would like to prevent having duplicate records on file. As CBP transitions to fully electronic systems starting with the transition from ACS to the ACE redesign, CBP envisions that system edits will address the duplication and outdated 5106s currently on file.

### **Comment**

When an individual receives goods valued over \$2,500 (formal entry), CBP should allow for the use of the CBP assigned number in lieu of an individual's Social Security number.

### **CBP Response**

CBP is in agreement with this comment. One of the purposes of the revised CBP Form 5106 is to encourage the use of a CBP-assigned number in lieu of the IOR SSN for individuals.

### **Comment**

It would be helpful for CBP's system to have some edits built in to recognize a valid address format recognized by the U.S. Post Office. We believe there is commercially available software



available to assist with this.

### **CBP Response**

CBP agrees with the spirit of the comment. The revisions to this document will affect only the data collection from the IOR and will not change or modify the current automated system which regulates CBP's mailing system; however, in the future with the ACE Redesign, we hope to improve the quality of the overall data system.

### **Comment**

It is requested that the reporting rules for informal values at entry summary are changed. Otherwise, the Customs broker will be requesting numerous Customs Assigned numbers for individuals in lieu of a SSN. If CBP allows the transmission of the name/address for shipments valued less than \$2,500 for both entry release and summary, it will prevent multiple CBP numbers from being assigned to the same individual, cluttering up CBP's data base.

### **CBP Response**

Any changes to the reporting rules for informal values are not germane to the revisions to the CBP Form 5106. CBP will not seek any changes to the rules for the informal values at the time of entry summary at this time as it is outside the scope of the revision to CBP Form 5106.

### **Comment**

Generic comment- this proposed change does not seem to address foreign corporations. Will these same requirements apply? How can brokers expect to comply with certain requirements when they are so US-centric?

### **CBP Response**

The current policy regarding foreign corporations has not changed; therefore, the same requirements will apply to those importers and or consignees who have chosen to conduct business with CBP. CBP has tailored the changes to the Form to enhance CBP's ability to make an informative assessment of risk and to facilitate legitimate trade into the United States.

### **Comment**

The submission of CBP Form 5106 should be a post-release activity and should, in no case, be required for release of the goods.

### **CBP Response**

The CBP Form 5106 is not a Post Entry document. The Importer ID Input Record (CBP Form 5106) is the basis for establishing the identity of the Importer of Record and some of the financial particulars prior to the IOR's importing. Since CBP has not implemented any changes to the regulations governing the use of this form, any regulations governing the presentation of the CBP Form 5106 will remain in effect until amended.

## **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.

## **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.

## **Comment**

In lieu of supplying the highly sensitive information proposed in the Federal Register Notice (i.e., Primary Banking Information, Company Officer SSN and Passport information), it is recommended using the process for obtaining a Continuous Bond as a vetting venue to ensure the legitimacy and financial stability of an entity, and to reduce the validation burden to CBP.

## **CBP Response**

A surety is an agent of the importer of record. If the importer cannot pay CBP for whatever reason, the surety stands in the shoes of the importer so that the government is made whole. Like an insurance company, CBP has a valid interest in knowing the particulars of the importer who will be transacting business with the agency. The Importer ID Input Record (CBP Form 5106) serves to accomplish that goal. CBP has a firewall and security in place to protect the confidential business information that an Importer of Record provides it. The Importer ID Input Record (CBP Form 5106) soon to be revised to read as "Create/Update Importer Identity Form" is also used as part of the basis for establishing bond coverage, release and entry of merchandise, liquidation, issuance of bills and refunds and processing of drawback actions.