



August 26, 2015

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U.S. Customs and Border Protection  
Department of Homeland Security  
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Washington, DC 20229

The Aerospace Industries Association (AIA) and our member companies appreciate another opportunity to comment on Custom and Border Protection's (CBP) proposed revisions to Form 5106 (Fed. Reg. 80, No. 143). In general, our member companies found CBP's website commentary and counterpoints to industry's comments collected during the first comment period very helpful in explaining the rationale driving the changes to Form 5106. Additionally, the inputs provided by others in industry helped to describe and elaborate on the risks CBP is addressing by changing Form 5106. Many of AIA's questions initially posed to CBP were clarified.

In reviewing the public comments submitted during the initial 60 day comment period, some highlighted the benefit of a revised Form 5106 in mitigating antidumping and countervailing duty (AD/CVD) collection issues and increasing scrutiny for companies applying for importing privileges. However, it remains vague as to whether anything will change to effectively address those who avoid paying duties owed. Through the proposed changes CBP will have more information on the front end to investigate entities prior to issuing new Import Identification Numbers; however, once issued, those who get through the front door could still take advantage of the system. It was cited that it takes roughly one to two years to resolve an AD/CVD review, at the end of which attempts to collect duties are met with outright refusals to pay, companies unable to pay due to low funds, dissolved companies, or simply those that have gone out of business. It is unclear how the changes proposed in a revised Form 5106 will change any of these apparent common outcomes when attempting duty collection after the fact. As such, we respectfully submit the following comments to help further clarify and refine Form 5106:

**Optional collection of information:** It is understood that additional data points could be desirable to CBP to accurately identify legitimate importers. However, our member companies believe that those companies who opt to provide an officers' Social Security Number (SSN) and passport, as well as a company's banking information, on Form 5106 subject this data to unnecessary risk. Even though the information will be maintained in the Automated Commercial Environment (ACE) which has its own safeguards and security, there is the ever-present risk of data exfiltration. By including this optional collection of information as part of Form 5106, it risks that the data (along with other necessary data) could be provided inadvertently or accessed by bad actors. The fact that the SORNs governing the sharing of information may be "updated on a periodic basis," notwithstanding the CBP comment that certain "information on the CBP Form 5106 remains within CBP," (see <http://www.cbp.gov/sites/default/files/documents/CBP%20FRN%205106%20Comments%20Summary%20and%20Response.pdf>, page 4 and page 17, respectively) is not reassuring. In fact, as of this writing, it

is evident that a SORN Notice of Proposed Rulemaking has been posted as recently as August 17, 2015 concerning the information in question.

The Fed. Reg. Vol. 80, No. 143 Notice notes that “CBP proposes to revise the CBP Form 5106 by changing the name of this form to be clearer as to its intended purpose, and by gathering additional information about the company and its officers. This 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 company and its officers who have chosen to conduct business with CBP.” Presumably, the risk referred to relates to failure to pay duties and fees related to a particular entry of merchandise. We believe the risk is largely or completely mitigated by the bond or security (CBP Form 301) which the Commissioner of Customs (and/or the port director) may, and in practice does, require pursuant to 19 CFR 113.1, on import transactions generally. Because in practice the bond must be in good standing at the time of the initial or any future import transaction, we challenge the assertion that information about company officers is necessary to “enhance CBP’s ability to make an informative assessment of risk prior to the initial importation.....”

Further we do not believe such information should be collected or requested even as optional because such information collection does not conform to the regulatory purpose. The purpose of the data collection, pursuant to 19 CFR 24.5(a), appears to be to provide notification of a prospective importer’s number or notice of change of address, for imports which will “result in the issuance of a bill or a refund check.” (Another purpose, the application for importer number, would not apply to a corporation already required to provide its Internal Revenue Service employer identification number per 19 CFR 24.5(b)(1).) The proposed changes suggest that the updated form is intended to expand rather than support the regulation on which it is based. Making the information optional does not rectify the scenario because of CBP’s assertion that “absence of other reportable data...could result in delay of release of cargo or delay in the processing of a refund.” (See <http://www.cbp.gov/sites/default/files/documents/CBP%20FRN%205106%20Comments%20Summary%20and%20Response.pdf>, page 23.)

Absence of such optional data should have no bearing on CBP’s processing of the 5106 form if it in the first place has no bearing on the issuance of a bill or a refund check or relate to the regulation being implemented; as CBP has itself stated, “[T]he name of the primary banking institution does not fall within the parameters of the regulation....” (See <http://www.cbp.gov/sites/default/files/documents/CBP%20FRN%205106%20Comments%20Summary%20and%20Response.pdf>, page 20.)

**Regular two-year analysis:** The impact on actual duty collection involving AD/CVD claims is an unknown. Any benefit to CBP’s function by changing Form 5106 would only become evident 1-2 years following the issuance of the revised Form 5106. Ultimately the benefit may not materialize. CBP, if it continues with the publication of the revised Form 5106, should undertake an analysis 2 years following the issuance of the revised Form 5106 to best gauge if the changes achieved their intended goal.

**Blocks 2C-2F:** To enhance the utility of the information requested in section 2, it is recommended that blocks 2C-2F either be removed as it is unclear whose contact details are to be provided or be changed to reflect a Company Point of Contact. In today’s high tech world, having a fax number is no longer common. Alternatively, some small companies do not maintain a company website. Changes recommended:

<b>2C:</b> Company Contact Name:	<b>2D:</b> Phone Number (with	<b>2E:</b> Fax Number (if available)
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	extension)	
2F: Email Address:	2G: Company Website (if available):	

**Section 3:** Though the changes to 3J reflect many of the comments provided to date, it is still unclear who is to be identified in 3J. Many AIA members do not have company officers well-versed in import laws and regulations, and to provide this expertise our member companies hire subject matter experts in the field of import compliance. This is an indicator of executive management support and demonstrates reasonable care. What is of concern is the general use of the term ‘knowledge’. Is CBP looking for the officer with ‘actual knowledge’, ‘full knowledge’, or possibly ‘implied knowledge’? AIA feels the terminology remains vague and we again request clarification on what rises to the level of enough knowledge of imports to qualify for listing in 3J. Otherwise, it is recommended that the term ‘import’ be removed from the criteria.

**Trusted trader programs:** It is appreciated that those who participate in trusted trader programs are not required to complete section 3 when updates are required. Some AIA members are low volume importers where participation in such a program may be cost prohibitive. To capitalize and be consistent with the approach CBP has taken with grandfathering existing, known importers and recognizing the trusted trader programs, AIA recommends that all of section 3 be exempt for known importers in good standing with CBP who also hold an ACE account. This exemption would decrease the agency’s estimated burden rate when legitimate importers must file an update to their Importer’s number or identify a change of their name or address.

**19 CFR 24.5(e):** If the CBP goals include changing Form 5106 to increase CBP scrutiny prior to issuance of importer identification numbers, then it is suggested that CBP review the one year limitation outlined in 19 CFR 24.5(e). This section of the regulation suggests that after one year, CBP expunges any prior importer identification number from its records which is believed to also mean the destruction of a previously submitted Form 5106. If this is accurate, CBP is placing itself at a disadvantage by not retaining information on previously vetted companies which may nonetheless have infrequent imports. CBP may wish to clarify this section of the regulations and be clear as to what is removed from their records and/or emphasize that support documentation may be kept longer than a year.

**General comments on the Form and instructions:**

- The beginning of the Form makes references to ‘*block 1*’ while the rest of the Form utilizes the term ‘*section*’.
- Inconsistent capitalization of the term ‘*section*’.
- Type of Action: both Change of name and Change of address include an \* which does not appear to link to any further explanation.
- The updated Form 5106 includes a reference to a QR Code; however, one could not be found on the form itself.
- Section 3 instructions do not include a reference to the exclusion referenced in 1J thru 1M.
- 3J includes ‘\* *Optional, please see Instructions.*’ None of the fields in 3J are marked with an \*.
- It was also noted that ‘*security*’ is capitalized once but not both times in 3J’s instructions.

Thank you again for the opportunity to provide comments on the proposed revisions, and we look forward to continued dialogue with CBP on this topic.

Best Regards,

A handwritten signature in black ink, appearing to read "Remy Nathan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Remy Nathan  
Vice President – International Affairs  
Aerospace Industries Association