



December 8, 2014

Tracey Denning
Regulations and Rulings, Office of International Trade
United States Customs and Border Protection
90 K Street Northeast
Washington, D.C. 20229-1177

Subject: AIA Public Comments on Proposed Changes to CBP Form 5106, *Importer ID Input Record*

Dear Ms. Denning,

The Aerospace Industries Association (AIA) and our member companies appreciate the opportunity to comment on Custom and Border Protection's (CBP) proposed revisions to Form 5106. The additional data elements proposed for Form 5106, according to the Federal Register Notice (FRN), are meant to provide CBP with enough information for which to make an informed assessment of risk and provide improved awareness regarding the company and its officers who have chosen to conduct business with CBP. The FRN requests that commentary address several areas related to the proposed revisions, including their potential effectiveness in achieving CBP's desired outcomes. The commentary below provides the response of AIA's membership to sections (a) – (e) outlined in the FRN. Ultimately, AIA has concluded that most of the proposed revisions are overreaching and may not generate the desired result as outlined by CBP.

- a. *Risk* – The Federal Register Notice makes several references to 'risk' without actually defining which type of risk is being addressed (e.g., financial, terrorism, dealing with ineligible parties, or general border security). It is difficult to discern what projected risk could be identified by an importer filing official notice to CBP that their company is beginning to import or that there is a change to that company's information. In the instance where a company is only filing a change to their address, what new risks could be identified by providing this additional information, particularly when they are a known importer to CBP with a track record with CBP? AIA promotes the notion that CBP's records of that company's import activity would shed more light on their risk than any details provided on the proposed new Form 5106.

For new importers, it is unclear whether the question "How many entries do you plan on filing in a year?" properly identifies risk. With such large categories to capture the responses, there is an opportunity to misplace importers into a seemingly higher risk category. In other words, if an importer engages in just 3 import entries a month (36

imports per year), that importer would be captured in the same category along with those doing hundreds of imports per year. This may or may not be an accurate indicator of risk and AIA questions its inclusion on Form 5106 to adequately address risk.

Even though the type of risk is not defined in the Federal Register Notice, it could be assumed that the risk is financial risk as the basis for Form 5106 is to establish bond coverage and issue bills, among other related financial characteristics. Determining the availability of credit or funds and whether the importer is in a position to pay a bill issued by CBP appears to be the only risk that CBP should be utilizing Form 5106 to identify. Therefore, with the exception of the D-U-N-S number, it is AIA's position that the additional details requested will not assist CBP in determining the financial risk of an importer. The details CBP can gain by accessing a company's D-U-N-S number and financial information, which can be obtained in the public domain if necessary, should provide details that would sufficiently familiarize CBP with the company, its financial exposure, access to other U.S. agency filings (SEC), and its officers. Therefore, no other information should be required on Form 5106. We recommend that all other suggested edits not be incorporated on Form 5106.

Additional Commentary: D-U-N-S numbers and the requested financial information are publicly available if necessary to collect.

Alternatively, if financial risk is not what CBP intended to use Form 5106 for and the focus and purpose of Form 5106 is to change, AIA recommends that CBP re-issue its Federal Register Notice requesting comments on the change in focus and the utility of capturing those details on a new Form 5106.

- b. *Improved Awareness* – CBP has identified that the added data elements are in line with other U.S. Government and industry standards for conducting business. AIA respectfully disagrees with this statement. Initial research could not identify a U.S. Government standard that requires the details on primary banking information, the type of building the address is linked to, the previous related parties to the business, or the passport¹ information of its officers. This type of information is also not germane to a company's importing activities or level of trade compliance. Further, it against several of our members internal policy to gather the requested personal information unless it is related to legitimate HR matters. Since the standard has not been met, AIA requests the deletion of these additional data elements; specifically 3B, 3C, and 3E-3J.

As an importer / exporter, industry registers with two main agencies: the Department of State's Directorate for Defense Trade Controls (DDTC) and the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). DDTC and ATF require the identification of officers of the corporate entity. They do not, however, require the identification of officers of each and every lower level business or subsidiary. The proposed changes to Form 5106 appear to request that type of lower level detail. DDTC

¹ According to the Department of State's Bureau of Consular Affairs only 12 million people have passports renewed or issued each year out of over 300 million. If the majority of Americans do not obtain a passport, this cannot be used as a reliable standard by which the U.S. Government measures a company officer's risk level.

and ATF require this detail as outlined in their regulations' formal registration process. Those registrations are maintained annually or through the five year time period allotted by ATF. Industry is expected to update those registrations as officers change and as businesses are added or dissolved. With the proposed changes to Form 5106, there is no mechanism to notify CBP of an immediate change to the officer roster as CBP does not have a formal registration process and the regulations do not provide for this type of detail to be provided and maintained.

Additionally, to what extent/standard is CBP expecting a company officer to have knowledge of a company's "importing activities?" The phrase "knowledge of a company's importing activities" is too vague and AIA respectfully requests clarification on what level of "knowledge" is required by whom and for what purpose. It is very unlikely that a CEO or CFO of a large business in the aerospace and defense sector would be the one performing reasonable care checks of all imports is simply wide of the mark.

- c. *Projected Timeline* – The time projected to gather the requested information and data is significantly underestimated by the calculations of AIA's member companies, perhaps only representing at most 1/10th of the actual time required according to conservative estimates. The additional information being requested will need to be obtained from sources outside of a company's compliance unit, which will take days to request, justify, obtain, and translate onto Form 5106.

Additionally, there are general concerns about the privacy of the details being requested. 19 CFR 130.31(d) affords a company the opportunity to request confidential treatment of inbound and outbound manifests. It is interpreted that Form 5106 falls outside of this confidentiality treatment and therefore leaves itself open for sharing at the discretion of CBP. The regulations at this time do not appear to provide privacy protection for Form 5106. AIA feels that this requested information is too sensitive to not have proper privacy controls in place.

In conclusion, the revised requirements for Form 5106 seem to be intended for small, unknown businesses that have no previous history with CBP. While AIA sees the utility in the addition of the D-U-N-S number to Form 5106, it is publically available information and if CBP wants to access that number they can do so without revising Form 5106. All other proposed additions should not be incorporated based on the reasons outlined above. AIA could not adequately identify the risk mitigation efforts the proposed data elements would drive and how these changes would be in line with the current use by CBP of Form 5106. Lastly, until CBP provides effective privacy measures within its regulations to cover Form 5106, a request for the personal information of company officers should not be included. Thank you for the opportunity to provide comments on the proposed revisions, and we look forward to continued dialogue with CBP on this topic.

Best Regards,

Remy Nathan
Vice President – International Affairs
Aerospace Industries Association

