

Supporting Statement
Customs Modernization Act Record Keeping Requirements
1651-0076

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Legislative changes contained in the North American Free Trade Agreement Implementation Act, Title VI, known as the Customs Modernization Act (Mod Act) amended title 19 U.S.C. 1508, 1509 and 1510, and title 19 C.F.R. by adding a new part 163. These changes related to Customs and Border Protection (CBP) laws regarding record keeping, examination of books and witnesses, regulatory audit procedures and judicial enforcement. Specifically, the Mod Act expanded the list of parties subject to CBP record keeping requirements, distinguished between records which pertain to the entry of merchandise and financial records needed to substantiate the correctness of information contained in or relied upon in entry documentation, and identified a list of records which, while not required to be filed with entry documentation, must be maintained by the above parties and produced upon a demand by CBP. The Mod Act clarified recordkeeping by requiring CBP to compile a list of all the records required by law or regulation for the entry of merchandise and then publish the list. The list was published as the Appendix to 19 C.F.R. Part 163 and this list is commonly known as the '(a)(1)(A) list because it is provided for in 19 U.S.C. 1509(a)(1)(A). The financial and other supporting records which are necessary to substantiate the correctness of various information supplied on the entry documents are provided for in 19 C.F.R. 163. The record retention period is 5 years from the date of entry. In addition, the regulations also contained provisions for a voluntary record keeping compliance program available to all parties who are required to maintain and produce entry records under CBP Regulations.

Public Law 103-182, the North America Free Trade Agreement Implementation Act (NAFTA Implementation Act, 107 Stat.2057) which contained Customs modernization provisions under Title VI of this Act. Sections 614, 615 and 616 of Title VI, amended sections 508, 509 and 510 of the Tariff Act of 1930, as amended (19 U.S.C. 1508, 1509 and 1510). Title II of the NAFTA Implementation Act, entitled "Customs Provisions", also amended sections 508 and 509 of the Tariff Act of 1930, as amended, to include record keeping requirements for exports to Canada and Mexico.

Collection of information in the regulations is contained in part 163.3, 163.4 and

163.5 of the CBP Regulations. CBP Regulations contains provisions for a voluntary record keeping compliance program available to all parties who are required to maintain and produce entry records.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Records and information are maintained and produced by owners, importers, consignees, importers of record, entry filers or other parties who import merchandise into the Customs territory of the United States, file a drawback claim, or transport or store merchandise carried or held under bond; or, knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the Customs territory of United States; or an agent of any party described above; or a person whose activities require the filing of a declaration or entry or both.

Records and information are produced and maintained on an entry-by-entry or drawback claim basis. Financial records needed to substantiate the correctness of information contained in entry documentation are those that a prudent businessman would ordinarily keep in the normal course of business. The information and records prepared by the above mentioned parties are used by CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods. Failure to have correct and accurate information could result in the wrong rate of duties, taxes and fees being assessed. In addition to the monetary impact, health and safety issues, circumvention of trade agreements, inaccurate trade statistics and in general, non-compliance with U.S. trade laws could occur. It should be noted that CBP processed collections involving duties and fees for imports in excess of \$28 billion. The record examination authority and related recordkeeping requirements, as amended by Mod Act Recordkeeping insure that CBP can satisfactorily review the records of trade community with minimal intrusion.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The regulations specifically provide that importing parties, brokers and drawback claimants shall retain records in original format. When the format is electronic this is the same format in which it shall be retained for the recordkeeping period. Alternative storage methods (CD ROM, machine readable data, microfiche, etc.) for

storing hard copy records by the trade community is permitted and the simplicity of procedures actually encourages alternate storage of records. This alternative storage method is for companies that wish to retain the original information in a different format than when initially submitted or recorded. Companies may either request alternate record storage, or if they file their documents with CBP electronically, they may keep their records in the same electronic format they use for filing. It is estimated that approximately 40 percent of respondents use alternate electronic record storage methods.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not duplicated in any other place or any other form.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of the OMB Form 83-I), describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

- 6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Each shipment is subject to a duty rate and other requirements based on individual shipments of imported goods. Unless the supporting documentation for each shipment, declaration or claim can be verified at the time of entry or at some later date, the wrong rate of duty or tax and fees would be assessed. In addition to the duty impact, health and safety issues, circumvention of trade agreements, and non-compliance with U.S. trade laws would occur.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.5(d)(2).

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Public comments were solicited through a Federal Register notice dated January 30, 2009 (Volume 74, Page 5670) and on May 14, 2009 (Volume 74, Page 22760). No comments have been received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There is no offer of a monetary or material value for this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There are no assurances of confidentiality provided to the respondents of this information collection.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

INFORMATION COLLECTION	TOTAL ANNUAL BURDEN HOURS	NO. OF RESPONDENTS	NO. OF RESPONSES PER RESPONDENT	TOTAL RESPONSES	TIME PER RESPONSE
Mod. Act Recordkeeping	4,870,593	4,695	1	4,695	1,037.4 hours

Public Cost

The estimated cost to the respondents is \$140,850. This is based on the estimated burden hours (4,695) multiplied (x) hourly rate (\$30.00).

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

The record keeping burden is described in Question #12 above. There are no

capital, start-up or maintenance costs associated with this information collection.

- 14. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.**

The annual estimated cost to the Federal Government associated with reviewing and processing the information is \$10,681,125. This is based on the time spent per record keeper (65 hours) x number of record keepers (4,695) = 305,175 hours expended x an estimated annual rate of \$35.00 = \$10,681,125.

- 15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

There has been no increase or decrease in the estimated annual burden hours previously reported for this information collection.

- 16. For collection of information whose results will be published, outline plans for tabulation, and publication.**

This information collection will not be published for statistical purposes.

- 17. If seeking approval to not display the expiration date, explain the reasons that displaying the expiration date would be inappropriate.**

CBP will display the expiration date for OMB approval of this information collection.

- 18. "Certification for Paperwork Reduction Act Submissions."**

CBP does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods

No statistical methods were employed.

