

**Supporting Statement
NAFTA Regulations and Certificate of Origin
1651-0098**

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.**

On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, "The North American Free Trade Agreement" (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (PL. 103-182).

CBP Form 434, *North American Free Trade Certificate of Origin*, is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11 and is accessible at:

http://forms.cbp.gov/pdf/CBP_Form_434.pdf

The CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is a questionnaire that CBP personnel use to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at:

http://forms.cbp.gov/pdf/CBP_Form_446.pdf

CBP is also seeking approval of Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, in order to gather information required by 19 CFR 181 Appendix, Section 11, (2) "Information Required When Producer Chooses to Average for Motor Vehicles". This form will be provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference.

Motor Vehicle Averaging is a method that helps companies qualify for duty free or preferential treatment under NAFTA, where they would not qualify otherwise. Therefore it is a significant benefit to the companies that use it. This new form will provide an easier and more organized method for companies to show CBP auditors how they did the averaging calculation.

Motor Vehicle Averaging is not only provided for by regulation, it is also part of the NAFTA agreement itself- see excerpt from NAFTA attached. Therefore it cannot be

eliminated because it was agreed upon by the US, Canada and Mexico. Canada has a similar form that they use for respondents to show motor vehicle averaging calculations.

A data query revealed that there are now 11 respondents using the motor vehicle averaging provision. It was originally thought that there were fewer than 10.

This information is collected from members of the trade community who are familiar with the CBP regulations.

- 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.**

CBP uses the information on Forms 434, 446, and 447 to determine if imported goods are entitled to preferential tariff treatment under NAFTA.

- 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.**

Automation of CBP Forms 434, 446 and 447 would not be cost effective because these forms are kept on file by the importer and only submitted to CBP upon request. Approximately 500 of these forms are submitted annually, and in the case of Form 447, CBP estimates that only an average of 14 forms will be submitted per year.

Forms 434 and 446 are fillable forms on the CBP website and can be accessed at <http://www.cbp.gov/xp/cgov/toolbox/forms/> . When Form 447 is approved by OMB, it will be posted as a fillable form on the same site.

- 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 , 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.

If the information on these three forms was not collected, CBP could not comply with regulatory requirements or carry out its responsibilities under the North American Free Trade Agreement.

7. Explain any special circumstances.

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 two Federal Register notices published on December 9, 2011 (Volume 76, Page 76983) on which no comments were received, and on February 21, 2012 (Volume 77, Page 9954) on which one comment was received.

Comment:

A comment was received from Mr. O'Neil L. Woelke of the Kozik and Woelke, PLC Law Firm dated March 22, 2012. In his letter, Mr. Woelke states that the requirement that a physical North American Free Trade Agreement (NAFTA) Certificate of Origin be in the importer's possession at the time of the preference claim was overly burdensome when the NAFTA was instituted in 1994 and, in light of business automation, and when compared with subsequent free trade agreements, still more burdensome today.

Mr. Woelke asserts that NAFTA Article 501(1) contemplates the possible revision of the NAFTA Certificate of Origin and that Article 513 provides a forum to trilaterally (meetings between all three NAFTA countries) agree to any such modification.

CBP Response:

This office is in agreement that NAFTA Article 501(1) provides for a trilaterally agreed upon revision to the NAFTA Certificate of Origin and that Article 513 provides a forum for that discussion. The trilateral NAFTA Customs Subgroup has

previously contemplated the revision of the NAFTA Certificate of Origin. The results of those negotiations ultimately proved inconclusive, resulting in the maintenance of the status quo requirements and procedures.

Mr. Woelke also advocates for the electronic transmission of the NAFTA Certificate of Origin from producer/exporter to the importer as a means of reducing the cost of compliance. CBP is conscious of the significant burden imposed by requiring the importer to possess a physical NAFTA Certificate of Origin.

In order to alleviate this burden, CBP does allow the electronic transmission of the NAFTA Certificate of Origin with the stipulation that the signature is a "true signature," not a signature by means of an "electronic symbol" or other process. The CBP field offices have all been instructed to accept the NAFTA Certificate of Origin electronically.

- I In practice, this means that CBP will accept a hand-signed NAFTA Certificate of origin as a facsimile or an email attachment (image, PDF, document, spreadsheet, etc.) with either a "true signature" or the image of a "true signature" pasted into the appropriate portion of the document. The allowance of an electronic transmission of the NAFTA Certificate of Origin is a CBP practice, applicable to importations into the United States, and has no bearing on exportations to either Canada or Mexico.

CBP does not contemplate either the unilateral or trilateral institution of a registry of principal exporters as suggested by Mr. Woelke.

- 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.**

A PIA for the Automated Commercial System (ACS) dated December 2, 2008, and a SORN for ACS/ACE, dated December 19, 2008 (Vol. 73, Page 77759) will be included in this ICR. No assurances of confidentiality are provided to respondents.

- 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
Form 434 NAFTA Certificate of Origin	30,000	40,000	3	120,000	15 minutes (.25 hours)
Form 446 NAFTA Questionnaire	300	400	1	400	45 minutes (.75 hours)
Form 447 NAFTA Motor Vehicle Averaging Election	14	11	1.28	14	60 minutes (1 hour)
TOTAL	30,314	40,411		120,414	

Public Cost

The estimated cost to the respondents is \$606,280. This is based on the estimated burden hours (30,314) multiplied (x) the average hourly rate (\$20.00).

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

There are no record keeping, 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.

CBP requests approximately 500 responses, so the estimated annual cost to the Federal Government associated with reviewing these forms is **\$5,250**. This is based

on 15 minutes (.25 hours) to review each form x the number of forms (500) for a total of 125 hours multiplied (x) the average hourly rate (\$42.00) = \$5,250.

15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13 of the Supporting Statement.

The increase in the burden hours is a result of the addition of proposed form 447. There are no changes to Forms 434 or 446.

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.