

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, 181.22, and is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is used by CBP personnel 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: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, is used to gather information required by 19 CFR 181 Appendix, Section 11, (2) "Information Required When Producer Chooses to Average for Motor Vehicles". This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

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.**

Forms 434, 446, and 447, which CBP uses to determine if imported goods are entitled to preferential tariff treatment under NAFTA, have now been incorporated in ACE as part of the Document Image System (DIS). Trade filers may access the DIS Implementation Guide setting forth the automated interface and email requirements at the CBP.gov website at the following link:

<https://www.cbp.gov/sites/default/files/assets/documents/2017-Jan/DIS%20XML%20Implementation%20Guide%20-%20January%202017.pdf>

- 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 May 26, 2016 (Volume 81, Page 33541) on which one comment was received, and on October 5, 2016 (Volume 81, Page 69071) on which no comments have been received.

Comment:

Mrs. Toni Garcia, CHB, Nidec Americas Holding Corporation, submitted a letter dated May 26, 2016, suggesting that the CBP Form 434, North American Free Trade Agreement Certificate of Origin (hereinafter "Certificate"), be modified to reduce confusion when completed by a producer who is not an exporter, recommending that the Certificate be modified and the instructions rewritten to make clear that:

1. The copy of the Certificate that must be in the importer's possession at the time of the NAFTA claim must be completed and signed by the exporter and not the producer.
2. The Certificate completed and signed by the producer serves only as backup documentation for the exporter when completing his form.
3. When the Certificate is completed by the Producer for backup use by the exporter, the Certificate and its instructions should be modified to make clear that Field One represents the "buyer" and Field Three the "seller" in the transaction. Field One currently states, "EXPORTER NAME, ADDRESS AND EMAIL". Field Three currently states, "PRODUCER NAME, ADDRESS AND EMAIL".

Mrs. Garcia offered that that the Field 11 instructions could state: "This field must be completed, signed, and dated by the exporter or producer. If the Certificate is completed by the producer for use by the exporter as evidence that the goods qualify for NAFTA, it must be completed, signed, and dated by the producer and used by the exporter for record keeping purposes only. The date must be the date the Certificate was completed and signed."

Mrs. Garcia did not elaborate on how Fields One and Field Three, and their corresponding instructions should be modified.

CBP Response:

CBP recognizes Mrs. Garcia's familiarity with the CBP Form 434 and acknowledges that some exporters mistakenly provide the producer's Certificate to the importer in lieu of their own.

CBP recognizes that the Field One and Field Three text plainly state "EXPORTER" and "PRODUCER," respectively, but should be filled out as "BUYER" and "SELLER" when the Certificate is completed by the producer for use by the exporter.

CBP recognizes that the Field 11 instructions could be modified to clarify that when completed by the producer it is solely for the use of the exporter and not the

importer.

However, CBP notes that the layout and instructions on the CBP Form 434, NAFTA Certificate of Origin, was trilaterally agreed upon by Canada, Mexico and the United States, and that any substantive modification requires negotiation with and concurrence from our NAFTA partners.

Furthermore, CBP notes that due to size limitations imposed by the 8 ½” by 11” form, inclusion of the proposed Field 11 instructions and any-yet-to-be-determined modification of the Field One and Field Three instructions would require the elimination or modification of other form instructions.

Based on the aforementioned, CBP will not propose initiating the trilateral process required to modify the CBP Form 434, NAFTA Certificate of Origin, to address Mrs. Garcia’s concern.

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.

All data submitted and entered into ACE is subject to and protected by the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. A PIA for the Automated Commercial Environment (ACE) dated July 31, 2015, and a SORN for the Import Information System, dated August 17, 2015 (Volume 80, Page 49256) 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	240,000	40,000	3	120,000	2 hours
Form 446 NAFTA Questionnaire	800	400	1	400	2 hours
Form 447 NAFTA Motor Vehicle Averaging Election	14	11	1.28	14	60 minutes (1 hour)
TOTAL	240,814	40,411		120,414	

*The NAFTA Certificate of Origin (Form 434) is kept in the claimant's files and only submitted upon request by CBP. An average of about 750 Certificates of Origin are submitted each year. CBP requests submission of the form if more documentation is needed to establish that goods are entitled to duty-free treatment under NAFTA.

The time per response was increased for Form 434 from 15 minutes to 2 hours and the time per response was increased for Form 446 from 45 minutes to 2 hours. Both increases were due to updated time response estimates.

Public Cost

The estimated cost to the respondents is \$7,246,093.26. This is based on the estimated burden hours (240,814) multiplied by (x) the average loaded hourly wage rate for exporters (\$30.09). CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2015 median hourly wage rate for Cargo and Freight Agents (\$20.13), which CBP assumes best represents the wage for exporters, by the ratio of BLS' average 2015 total compensation to wages and salaries for Office and Administrative Support occupations (1.4799), the assumed occupational group for exporters, to account for non-salary employee benefits.^{1,2} CBP then adjusted this figure, which was in 2015 U.S. dollars, to 2016 U.S. dollars

1 Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2015 National Occupational Employment and Wage Estimates, United States- Median Hourly Wage by Occupation Code: 43-5011." Updated March 30, 2016. Available at <http://www.bls.gov/oes/2015/may/oes435011.htm>. Accessed June 1, 2016.

2 The total compensation to wages and salaries ratio is equal to the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations (\$24.9475) divided by the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category (\$16.8575). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. *Employer Costs for Employee Compensation Historical Listing March 2004 – March 2016*, "Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2016 by Respondent Type: Office and administrative support occupations." June 9, 2016. Available at <http://www.bls.gov/ncs/ect/sp/ececrtrn.pdf>. Accessed June 14, 2016.

by applying a 1.0 percent annual growth rate to the figure, as recommended by the U.S. Department of Transportation's value of travel time guidance.³

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.

The estimated annual cost to the Federal Government associated with the review of these records is \$38,155.92. This is based on 30 minutes (.5 hours) to review each form (x) the number of responses submitted (750 Certificates of Origin, 400 NAFTA Questionnaires and 14 Motor Vehicle, Averaging = 1,164) = 582 hours multiplied by (x) the average hourly loaded rate for other CBP employees (\$65.56)⁴ = \$38,155.92.

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

The burden hours were increased from 30,314 to 240,814 for this clearance as a result of the increase in times per response for Forms 434 and 446. The time per response for Form 434 was increased from 15 minutes to 2 hours and the time per response for Form 446 was increased from 45 minutes to 2 hours. Both increases were due to updated time response estimates. There are no changes to the information collected.

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.

3 Source: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update)*, "Table 4 (Revision 2-corrected): Recommended Hourly Values of Travel Time Savings." April 29, 2015.

<http://www.transportation.gov/sites/dot.gov/files/docs/Revised%20Departmental%20Guidance%20on%20Valuation%20of%20Travel%20Time%20in%20Economic%20Analysis.pdf>. Accessed June 1, 2016.

4 CBP bases this wage on the FY 2016 salary and benefits of the national average of other CBP positions, which is equal to a GS-13, Step 5. Source: Email correspondence with CBP's Office of Administration on June 27, 2016.

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.