

U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE

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SUBJECT: THE CERTIFICATE OF ORIGIN FOR THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA); PROCEDURAL UPDATES, AND NEW ACCEPTABLE FORMATS

1. PURPOSE. This directive updates policy guidelines for the NAFTA Certificate of Origin (Certificate) for importations of goods into the United States on which NAFTA preferential tariff treatment is claimed.

2. POLICY.

2.1 The Certificate is the fundamental document required to support a claim for NAFTA benefits. The Certificate confers legal rights and obligations. Completion of a Certificate is an affirmation that the signatory has made a careful inquiry into the terms of the NAFTA, has determined that the goods covered by the Certificate originate as defined by the NAFTA, and maintains the relevant records.

2.2 The Certificate must be signed by the exporter, or by the exporter's authorized agent having knowledge of the relevant facts. Producers who are not exporters may choose to prepare a Certificate and provide it to the exporter, but there is no requirement that they do so and in no case will this relieve exporters of their obligation to prepare a Certificate.

2.3 A Certificate is required for each importation on which NAFTA preference is claimed and covers only those goods specified on the Certificate. The Certificate need not accompany each shipment, but must be presented to U.S. Customs and Border Protection (CBP) upon request.

2.4 The Certificate must be in the possession of the importer at the time preferential treatment is claimed. However, Port Directors may, in writing, waive this requirement in accordance with 19 Code of Federal Regulations 181.22(d)(i) if otherwise satisfied that the good qualifies for preferential treatment under the NAFTA.

2.5 CBP does not require a Certificate for noncommercial importations or commercial importations with a total line item value of U.S. \$2,500 or less. This applies to both formal and informal entries. The \$2,500 refers to the line item value, not the total value of the shipment. For commercial shipments, however, the invoice accompanying the

importation shall include a statement certifying that the goods qualify as originating goods, as prescribed in 19 CFR 181.22(d)(iii). CBP may require a Certificate for these shipments if it is reasonably determined that a series of low-value importations was used instead of a single importation to evade the Certificate requirement.

2.6 The NAFTA provides for a uniform Certificate in all three countries and is printed in English, French, or Spanish, at the exporter's or producer's discretion. In the United States, the Certificate is printed in English on CBP Form 434, or in other format as approved by CBP as outlined in section 5.2 of this directive. CBP may request a translation of the Certificate to substantiate a claim for NAFTA benefits.

2.7 Certificates are valid provided they are legible, completed, signed, and dated. A Certificate should contain sufficient information so as to allow CBP to establish whether the goods it covers are entitled to preferential tariff treatment. Original Certificates are not required (i.e., photo copies, facsimiles, and Certificates scanned on a computer disc are acceptable).

2.8 Certificates are valid for 4 years from the date on which they were signed. The exporter is required to retain the Certificate for 5 years from the date of signature. The importer is required to retain records relating to the importation of the good for a period of 5 years.

2.9 A single Certificate may be used for a single shipment of goods that results in the filing of one or more entries on the importation of the goods into the customs territory of the United States, or for more than one shipment of goods that results in the filing of one entry on the importation of the goods into the customs territory of the United States.

2.10 Single Certificates may be used for single importations. The single Certificate should be related to the shipment by indicating the invoice number or other unique reference. Blanket Certificates may be used for repetitive shipments of goods, and the goods must be imported on or between the specified "FROM" and "TO" dates. This period may not exceed 12 months.

3. AUTHORITIES/REFERENCES. 19 CFR Parts 163, 181.0-23, 181.71-72, 181.76, 181.81-82; 19 U.S.C. 1508; 19 U.S.C. 1592; NAFTA Articles 501-514; GN12 of the Harmonized Tariff Schedule of the United States; Regulatory Standards for Implementation of the NAFTA.

4. RESPONSIBILITIES. The Assistant Commissioner, Office of Field Operations; Executive Director, Trade Compliance and Facilitation; Directors, Field Operations; Port Directors, and Assistant Port Directors will ensure that these procedures are followed. It is the Port Directors' responsibility to distribute this directive to people doing business with CBP.

5. PROCEDURES.

5.1 General.

5.1.1 Import Specialists shall request copies of Certificates, and translations thereof, as necessary to substantiate claims for preferential NAFTA treatment. CBP shall give importers a reasonable amount of time to submit a Certificate; generally 30 days.

5.1.2 If the Import Specialist determines that a Certificate is not signed, not dated, is illegible, or has not been completed in accordance with 19 CFR 181.22(b), the importer shall be given a period of not less than 5 working days to perfect the claim. If the importer fails to submit a valid Certificate after this request from CBP, the Import Specialist may deny the claim for NAFTA benefits.

5.1.3 In situations where the Certificate was not signed, not dated, or was dated after the date of the claim, the importer must provide proof that a signed and correctly dated Certificate was in the importer's possession on the date the claim was made. Failure to provide Import Specialists with such proof will result in the denial of the claim.

5.1.4 Certificates submitted as part of a 520(d) post-importation claim may be dated on or before the date of the post-importation claim.

5.1.5 Import Specialists shall deny claims, and consider the assessment of penalties, if it is determined that an importer did not possess a valid Certificate at the time the claim for preferential NAFTA treatment was made, and the Port Director did not in writing waive this requirement per 19 CFR 181.22(d)(i).

5.1.6 False statements made in connection with the claim will result in denial of the claim and assessment of penalties as provided by law.

5.1.7 When issuing a negative determination, the Import Specialist shall notify the importer of his protest rights under 19 USC 1514(a)(7) and 19 CFR 174.12(e)(2). (See Attachment A for sample wording for a NAFTA "denial" letter sent to the importer for failure to provide the Certificate to CBP upon request.) The Import Specialist shall consider a protest filed against a refusal to liquidate or reliquidate a NAFTA claim made under 19 U.S.C. 1520(d).

5.1.8 A negative determination for a good on a blanket Certificate covers all identical goods, as defined in 19 CFR 181 Appendix Section 2 (1), on that Certificate.

5.1.9 When two or more negative determinations indicate a pattern of false or unsupported NAFTA claims, the Import Specialist should deny subsequent claims for NAFTA preference on identical goods until compliance is established.

5.1.10 An exporter or producer who completes and signs a Certificate, and who has reason to believe that the Certificate contains information that is not correct, shall promptly notify in writing all persons to whom he or she gave the Certificate of any change that could affect the accuracy or validity of the Certificate.

5.1.11 For goods covered by a blanket Certificate, it is the exporter's responsibility to advise the importer of any significant changes in, for example, sourcing materials or production methods that may affect the NAFTA claim and furnish the importer with a new Certificate. Producers who provide a Certificate to an exporter must likewise notify the exporter of any such changes.

5.1.12 An importer who receives information that a Certificate is not valid must make a corrected declaration of origin within 30 days of discovery, and pay any applicable duties, provided the liquidation of the entry summary is not yet final. Failure to correct a declaration that is known to contain inaccurate information may result in the assessment of penalties.

5.2 New Acceptable Formats for the NAFTA Certificate of Origin. CBP will accept three types of Certificates: (1) The official CBP Form 434; (2) the Alternate CBP Form 434 (Alt 434); and (3) the Computer-Generated Alternated CBP Form 434.

5.2.1 CBP Form 434

The official Certificate of Origin form is available through local CBP port offices or via the internet by selecting "forms" at <http://www.cbp.gov>. Field-by-field instructions for completing the CBP Form 434 are provided on the back of the form. CBP will accept original CBP Form 434s, photocopies, facsimiles, and Certificates scanned on a computer disc.

5.2.2 Alternate 434 (Alt 434)

The Alt 434 must be legibly printed or typed in full by the exporter and be in the possession of the importer at the time the NAFTA claim is made, unless the Port Director has in writing waived the requirement for a Certificate in accordance with 19 CFR 181.22 (d) (i). CBP will accept original Alt 434s, photocopies, facsimiles, and Certificates scanned on a computer disc. This document may also be completed voluntarily by the producer for use by the exporter. An Alt 434 is valid as long as it contains all the information below.

1. Full legal name, address (including country), and legal tax identification number of the exporter.
2. If the Certificate covers multiple shipments of identical goods for a specified period of up to 1 year (blanket period), it must include the date upon which the

Certificate becomes applicable to the good covered by the blanket Certificate ("FROM" date), and the date upon which the blanket period expires ("TO" date). The importation of a good for which preferential tariff treatment is claimed based on this Certificate must occur between these dates.

3. Legal name, address (including country) and legal tax identification number of the producer. If more than one producer's good is included on the Alt 434, a list of the additional producers, including the legal name, address (including country) and legal tax identification number must be attached. If the importer requests this information to be confidential, he/she may state "Available to CBP upon request". Indicate whether the producer and the exporter are the same, or if the producer is unknown.
4. Legal name, address (including country) and legal tax identification number of the importer. If the importer is not known, state "UNKNOWN"; if multiple importers, state "VARIOUS."
5. Full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (H.S.) description of the good. If the Certificate covers a single shipment of a good, include the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order number.
6. The H.S. tariff classification to six digits. If the good is subject to a specific rule of origin in Annex 401 that requires eight digits, identify to eight digits, using the H.S. tariff classification of the country into whose territory the good is imported.
7. Preference criterion (A through F).
8. Exporter must indicate whether he/she is the producer of the good. If the exporter is not the producer of the good, he/she must indicate whether the claim is based on knowledge of whether the good qualifies as an originating good; reliance on the producer's written representation (other than a Certificate of Origin) that the good qualifies as an originating good; or a completed and signed Certificate for the good, voluntarily provided to the exporter by the producer.
9. Where the good is subject to a regional value content (RVC) requirement, indicate "NC" if the RVC is calculated according to the net cost method; otherwise, indicate "NO". If the RVC is calculated according to the net cost method over a period of time, further identify the beginning and ending date of that period. (Reference: Articles 402.1, and 402.5).
10. Identify the name of the country ("CA" or "MX") to which the preferential rate of customs duty applies.
11. The following statement must be included, signed, and dated:

I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for

any false statements or material omissions made on or in connection with this document.

I agree to maintain, and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom this certificate was given of any changes that could affect the accuracy or validity of this certificate.

The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the North American Free Trade Agreement. There has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States.

This certification consists of _____ pages, including all attachments.

5.2.3 Computer-Generated Alternate 434

5.2.3.1 Computer-Generated Alt 434s must be preapproved in writing by the Office of Field Operations in Washington, DC before use. This preapproval process is necessary to ensure the validity of the computer-generated certification. Importers may apply for approval of their Computer-Generated Alt 434 to the Trade Agreements Branch, Office of Field Operations, U.S. Customs and Border Protection, Room 5.2A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

5.2.3.2 The Computer-Generated Alt 434 must include screen prints or a report containing all of the required elements listed in Section 5.2.2. Because these screen prints and/or reports will be generated by the importer's computer software, the importer must include a key or schematic clearly relating the required data elements. There is no specific order or format for these data elements. Computer screen prints should be numbered 1 of X to indicate the number of pages. Identical certification language shall be included either as part of the Computer-Generated Alt 434 or as an attachment.

5.2.3.3 In most cases, CBP anticipates that the use of Computer-Generated Alt 434s will be by related parties with the importer of record submitting the Computer-Generated Alt 434 on behalf of the exporter. Therefore, CBP may also request proof of power of attorney for Computer-Generated Alt 434s that are generated by the importer on behalf of the exporter. CBP may request proof that the information contained in the Certificate was on file at the time the claim for preferential treatment was made. Import Specialists may contact the Trade Agreements Branch to find out whether a Computer-Generated Alt 434 has been preapproved by Headquarters. The importer of record may submit a

Computer-Generated Alt 434 that is signed and dated on the date the Certificate is printed, which may be dated after the date of the claim.

5.2.3.4 Importers using Computer-Generated Alt 434s must have an adequate inventory management control system, recordkeeping system, and computer system (capable of tracking changes to the originating status of inputs, while maintaining a fixed creation date) and the ability to support the integrity of the data and any changes to the data in order to provide CBP with an audit trail. Records subject to audit include electronic records and any supporting hard copy source records necessary to establish that the system was programmed to generate a valid Computer-Generated Alternate Certificate.

5.2.3.5 CBP retains the right to audit a company's records. Requirements for maintaining records by all applicable parties in support of the Computer-Generated Alternate Certificate are set forth in 19 CFR 181, and Part 163 of the Regulations and Article 505 of the NAFTA.

5.2.3.6 Use of a Computer-Generated Alternate Certificate in no way alters the responsibilities or requirements of the importer or exporter with respect to the NAFTA and applicable laws and regulations. Failure to comply with the requirements stipulated by this program, or the NAFTA, or applicable laws and regulations will result in suspension or removal from the program and/or fines, penalties, or liquidated damages.

5.2.3.7 The facts asserted in the Certificate must be supported by adequate records relating to the good, its materials and production. All other requirements pertaining to the NAFTA Certificate set forth in 19 CFR 181.22 remain in effect. CBP may deny a claim if the exporter, producer, or their agents do not provide additional supporting information when requested.

5.3 Recordkeeping

5.3.1 All persons completing a Certificate or otherwise involved with the importation of goods into the United States are subject to the recordkeeping requirements set forth in 19 CFR 163, and the Interim (a)(1)(a) List (19 CFR 163 Appendix). These provisions obligate the parties to maintain records relating to the originating status and the importation and entry of imported goods for a period of not less than 5 years. Failure to maintain and provide such records upon request renders the party liable for recordkeeping penalties per 19 U.S.C. 1508 and 19 U.S.C. 1509.

5.3.2 Examples of such records include, but are not limited to, manufacturer, exporter or material Certificates, and all other records supporting the NAFTA claim, such as invoices, production records, bills of materials (complete with costs, originating status, and names and locations of the manufacturers), as well as shipping and other importation records.

5.4 Enforcement and Penalties.

5.4.1 Failure to submit a Certificate and/or supporting documentation upon request, failure to submit a corrected Certificate, or material false statements, acts or omissions, shall result in the Import Specialist denying NAFTA preference.

5.4.2 Material false statements, acts or omissions, or failure to maintain and provide records, may result in civil or criminal penalties, including penalties for fraud, gross negligence or negligence (19 U.S.C. 1592) or for recordkeeping (19 U.S.C. 1508 and 19 U.S.C. 1509).

5.4.3 Penalties under 19 USC 1592 may be assessed in an amount of up to the value of the goods for fraudulent violations. The penalty for gross negligence is the lesser of the value of the goods or 4 times the duties, taxes and fees, or 40 percent of the value, if nondutiable. The penalty for negligence is the lesser of the value of the goods or two times the duties, taxes and fees, or 20 percent of the value if nondutiable.

5.4.4 Recordkeeping penalties under 19 U.S.C. 1508 relating to NAFTA exports are subject to a civil penalty not to exceed \$10,000. Penalties under 19 U.S.C. 1509 for willful failure to comply may be assessed in an amount of up to \$100,000, or 75 percent of the value of the merchandise per importation. If the violation is determined to be as a result of negligence, the penalty may be assessed in an amount of up to \$10,000, or 40 percent of the value per importation.

5.4.5 Requirements for maintaining records by all applicable parties in support of the NAFTA Certificate are set forth in 19 CFR 181, and Part 163 of the U.S. Customs and Border Protection Regulations and Article 505 of NAFTA. These requirements cover the Certificate, in all its forms as presented here (CBP Form 434, Privately-Printed Alternate Certificate, Computer-Generated Alternate Certificate), as well as supporting documentation.

5.4.6 A person who voluntarily makes a corrected declaration in accordance with 19 CFR 181.82 shall not be subject to civil or administrative penalties. However, a person who acted by means of fraud in making an incorrect declaration or certification is not afforded the same protections.

Assistant Commissioner
Office of Field Operations

Attachment

Attachment A

Sample Text for CBP Form 29 NAFTA Denial
“Proposed” and “Action Taken”
[Complete or edit the following paragraphs as appropriate.]

PROPOSED (CBP must afford the importer an opportunity to perfect a claim):

The Certificate of Origin received by this office is not acceptable for the following reasons: [explain why]. If a valid Certificate is not received by this office within 5 working days, your claim for NAFTA preference on these goods will be denied, without further notification.

The Certificate received by this office has not been certified with an official signature by the exporter, or by the exporter’s authorized agent having knowledge of the relevant facts. Please provide this office with proof that a valid Certificate (containing the official signature) was on file at the time this claim for preferential treatment under the NAFTA was made.

Please address any questions to this office at [phone number]

ACTION TAKEN:

On [date], a CBP Form 28 Request for Information was issued by this office, requesting a copy of the Certificate of Origin (CF 434) used as the basis for your NAFTA claim on the above-referenced entry.

On [date] CBP Form 29 was issued by this office affording you, the importer, the opportunity to submit a corrected Certificate within 5 working days.

Inasmuch as no response has been received by CBP, pursuant to 19 CFR 181.23, your claim for NAFTA preference on these goods has been denied.