U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 24, 113, 123, 141, 144, 163, 174, AND 182

CBP DEC. 24–18

RIN 1685–AA00 (FORMERLY RIN 1515–AE65)

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA (USMCA) IMPLEMENTING REGULATIONS RELATED TO TEXTILE AND APPAREL GOODS, AUTOMOTIVE GOODS, AND OTHER USMCA PROVISIONS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the U.S. Customs and Border Protection (CBP) regulations to add implementing regulations for the preferential tariff treatment and related customs provisions of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) with respect to general definitions, drawback and duty-deferral programs, textile and apparel goods, and automotive goods. This document also amends the regulations to implement the temporary admission of goods, to delineate recordkeeping and protest requirements, to clarify the fee provisions, and to make conforming amendments, including technical corrections to other laws as required by statute.

DATES: This interim final rule is effective on March 18, 2025. However, compliance with the labor value content certification, steel purchasing certification, and aluminum purchasing certification provisions in §§ 182.95, 182.96, and 182.97 will only be required for those vehicle certifications submitted to CBP on or after May 19, 2025. Comments regarding this interim final rule must be received by March 18, 2025.

ADDRESSES: Please submit comments, identified by *docket number* USCBP–2024–0017, by the following method:

Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: *Operational Aspects and Audit Aspects:* Raymond J. Irizarry, Director, Textiles and Trade Agreements Division, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, (202) 945–7236 or *FTA@cbp.dhs.gov*.

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SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

II. Background

On November 30, 2018, the "Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada" (the Protocol) was signed to replace the North American Free Trade Agreement (NAFTA). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the

USMCA)[1] is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the "Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada" (the Amended Protocol), which the Office of the United States Trade Representative (USTR) signed on December 10, 2019.

Pursuant to section 106 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4205) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the United States approved and implemented the USMCA through the enactment of the United States—Mexico—Canada Agreement Implementation Act (USMCA Implementation Act), Pub. L. 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), on January 29, 2020. Section 103(a)(1)(B) of the USMCA Implementation Act (19 U.S.C. 4513(b)(1)) provides the authority for new or amended regulations to be issued to implement the USMCA, as of the date of its entry into force.

Mexico, Canada, and the United States certified their preparedness to implement the USMCA on December 12, 2019, March 13, 2020, and April 24, 2020, respectively. As a result, pursuant to paragraph 2 of the Protocol, which provides that the USMCA will take effect on the first day of the third month after the last signatory party provides written notification of the completion of its domestic procedures required for entry into force, the USMCA entered into force on July 1, 2020.

Subsequent to the USMCA's entry into force date, on December 27, 2020, the Consolidated Appropriations Act, 2021 (Appropriations Act), Pub. L. 116–260, was enacted with Title VI of the Act containing technical corrections to the USMCA Implementation Act. All of the changes contained within Title VI of the Appropriations Act are retroactively effective on July 1, 2020, the USMCA's entry into force date. *See* sections 601(h) and 602(g) of Title VI of the Appropriations Act. These changes included amending section 202 of the USMCA Implementation Act (19 U.S.C. 4531) to prohibit non-originating goods used in production processes within foreign trade zones (FTZs) from qualifying as originating goods under the USMCA. *See* section 601(b) of Title VI of the Appropriations Act. Additionally, section 601(e) of Title VI of the Appropriations Act amended 19 U.S.C. 1520(d) to allow the refund of merchandise processing fees for USMCA post-importation claims. The Appropriations Act also included technical corrections to other laws. These other laws, such as

[1] The Agreement Between the United States of America, the United Mexican States, and Canada is the official name of the USMCA treaty. Please be aware that, in other contexts, the same document is also referred to as the United States-Mexico-Canada Agreement.

the African Growth and Opportunity Act and the Caribbean Basin Economic Recovery Act, implemented the relevant trade preference programs using the NAFTA rules of origin. With the repeal of the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), section 602(a) and (b) of Title VI of the Appropriations Act amended these other laws to include the USMCA rules of origin.

Pursuant to USMCA Article 5.16, the United States, Mexico, and Canada trilaterally negotiated and agreed to Uniform Regulations. The USMCA Free Trade Commission adopted the Uniform Regulations in its Decision No.1, effective as of the date of entry into force of the USMCA. Annex I to that decision includes:[2]

- The Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapter 4 (Rules of Origin) and Related Provisions in Chapter 6 (Textile and Apparel Goods) of the Agreement Between the United States of America, the United Mexican States, and Canada (Uniform Regulations regarding Rules of Origin), and
- The Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapters 5 (Origin Procedures), 6 (Textile and Apparel Goods), and 7 (Customs Administration and Trade Facilitation) of the Agreement Between the United States of America, the United Mexican States, and Canada (Uniform Regulations regarding Origin Procedures). In accordance with USMCA Article 5.16, modifications or additions to the Uniform Regulations shall be considered regularly by the USMCA Parties to reduce their complexity and to ensure better compliance. To this end, further iterations of the Uniform Regulations may be negotiated. Part 182 of title 19 of the Code of Federal Regulations (CFR) (19 CFR part 182) contains the Uniform Regulations regarding Chapter 4 Rules of Origin and related provisions of Chapter 6 in Appendix A. The Uniform Regulations for Chapter 5, remaining provisions of Chapter 6, and Chapter 7 regarding Origin Procedures are incorporated in title 19 of the CFR, including 19 CFR part 182, as appropriate for U.S. administrative processes and procedures. Part 182 of title 19 of the CFR will be amended through subsequent rulemaking to reflect future changes to both sets of the Uniform Regulations, as needed.

The USMCA superseded NAFTA and its related provisions on the date that USMCA entered into force. *See* Protocol, paragraph 1. Section 601 of the USMCA Implementation Act repealed the NAFTA Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (19 U.S.C.

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[2] Available at: *https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/free-trade-commission-decisions/usmca-free-trade-commission-decision-no-1.*

3301), as of the date that the USMCA entered into force. The NAFTA provisions set forth in part 181 of title 19 of the CFR (19 CFR part 181) and in General Note 12, Harmonized Tariff Schedule of the United States (HTSUS), continue to apply to goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020.

Claims for preferential treatment under the USMCA may be made as of July 1, 2020. On July 1, 2020, CBP published an interim final rule (IFR), entitled "Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Uniform Regulations Regarding Rules of Origin," (CBP Dec. 20–11) in the **Federal Register** (85 FR 39690), amending part 181 and adding a new part 182 containing several USMCA provisions, including the Uniform Regulations regarding Rules of Origin as Appendix A of part 182 to title 19 of the CFR (19 CFR part 182), which was trilaterally agreed upon by the United States, Mexico, and Canada. CBP later published an IFR on July 6, 2021, entitled, "Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to the Marking Rules, Tariff-rate Quotas, and Other USMCA Provisions," (CBP Dec. 21–10) in the **Federal Register** (86 FR 35566), which was effective on July 1, 2021. The IFR amended part 182 to implement USMCA Chapters 1, 2, 5, and 7 related to general definitions, confidentiality, import requirements, export requirements, post-importation duty refund claims, a portion of the drawback and duty-deferral programs, general verifications and determinations of origin, commercial samples, goods re-entered after repair or alteration in Canada or Mexico, and penalties. It also amended several other parts of title 19 of the CFR necessary to implement the USMCA. In addition to those regulations and the regulations set forth in this document, persons intending to make USMCA preference claims may refer to the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA* for further guidance. The United States International Trade Commission has modified the HTSUS to include the addition of General Note 11, incorporating the USMCA rules of origin for preference purposes, and the insertion of the special program indicator "S" or "S+" for the USMCA in the HTSUS "special" rate of duty subcolumn.[3]

A. The Customs Related USMCA Provisions

The USMCA is composed of 34 chapters along with additional side letters. CBP is responsible for administering the customs related provisions contained within Chapters 1 (Initial Provisions and Gen-

[3] The S+ indicator is used for certain agricultural goods and textile tariff preference levels (TPLs).

eral Definitions), 2 (National Treatment and Market Access for Goods), 4 (Rules of Origin), 5 (Origin Procedures), 6 (Textile and Apparel Goods) and 7 (Customs Administration and Trade Facilitation) of the USMCA and, pursuant to Article 5.16 of the USMCA, the Uniform Regulations regarding Rules of Origin as well as the Uniform Regulations regarding Origin Procedures. This IFR amends the CBP regulations to implement remaining customs related USMCA provisions that CBP is responsible for administering, as described below.

Chapter 1 of the USMCA contains the general definitions and country-specific definitions applicable to the USMCA, unless otherwise provided.

Chapter 2 of the USMCA sets forth the national treatment and market access provisions. Unless otherwise provided, each USMCA country shall apply a customs duty on an originating good in accordance with its Schedule in Annex 2–B (Tariff Commitments) of Chapter 2 of the USMCA. *See* Article 2.4 of the USMCA. USMCA Chapter 2 also contains the drawback and duty-deferral program provisions (Article 2.5) and the temporary admission of goods provisions (Article 2.7).

USMCA Chapter 4 contains the general rules of origin for preferential tariff treatment. Annex 4–B contains the product-specific rules of origin. Specifically, the Appendix to Annex 4–B of Chapter 4 of the USMCA sets forth the provisions related to the product-specific rules of origin for automotive goods. *See* USMCA Article 4.10. USMCA Appendix to Annex 4–B includes the automotive good-specific definitions (Article 1); the averaging provisions for purposes of calculating the regional value content of a passenger vehicle, light truck, heavy truck, or automotive good (Article 5); the steel purchasing and aluminum purchasing requirements (Article 6); the labor value content requirements (Article 7); and the provisions related to the transition period during which a qualifying passenger vehicle, light truck, or heavy truck may be originating under the USMCA pursuant to an alternative staging regime (Article 8).

Chapter 5 of the USMCA sets forth the origin procedures. This includes the recordkeeping requirements for importers, exporters, and producers (Article 5.8); the general origin verification requirements and procedures (Article 5.9); determinations of origin (Article 5.10); advance rulings relating to origin (Article 5.14); and the review and appeal of determinations of origin and advance rulings (Article 5.15).

Chapter 6 includes the product-specific rules of origin specific to textiles and apparel goods. Except as specifically provided for in USMCA Chapter 6, USMCA Chapters 4 (Rules of Origin) and 5 (Origin Procedures) apply to textile and apparel goods as well. *See* USMCA Article 6.1. Chapter 6 contains the textile and apparel goods site visit verification provisions (Article 6.6), and the determination of origin provisions (Article 6.7). Annex 6–A of Chapter 6 of the USMCA sets forth the special provisions applicable to certain textile and apparel goods. *See* USMCA Article 6.3. Section C of Annex 6–A sets forth the tariff preference level provisions related to preferential tariff treatment for non-originating goods of another USMCA country, including the requirements and applicable procedures. USMCA Annex 6–B contains the schedule of conversion factors that apply to tariff preference levels.

USMCA Chapter 7 sets forth provisions related to customs administration and trade facilitation, specifically provisions on advance rulings (Article 7.5) and on review and appeal of customs determinations (Article 7.15).

The Chapters 1, 2, 4, 5, 6, and 7 provisions discussed above are reflected in this IFR. CBP is soliciting public comments in this document. CBP will address any public comments received from the IFRs implementing the USMCA in a final rule published in the **Federal Register**. Additionally, future trilateral negotiations on the Uniform Regulations may result in additional provisions that will be included in a future rulemaking process at a later date.

B. Textiles and Apparel Goods

Under the USMCA, a textile or apparel good is defined as a good classified in Harmonized System (HS) subheading 4202.12, 4202.22, 4202.32, or 4202.92 (luggage, handbags and similar articles with an outer surface of textile materials); headings 50.04 through 50.07, 51.04 through 51.13, 52.04 through 52.12, 53.03 through 53.11; Chapters 54 through 63; heading 66.01 (umbrellas) or heading 70.19 (yarns and fabrics of glass fiber); subheading 9404.90 (articles of bedding and similar furnishing); or heading 96.19 (babies diapers and other sanitary textile articles). *See* USMCA Article 1.5. Chapter 6 of the USMCA contains the provisions that apply only to the treatment of textile and apparel goods. Unless otherwise noted, the provisions in USMCA Chapter 6 are additional requirements, with the rules of origin in USMCA Chapter 4 and the origin procedures in USMCA Chapter 5 also applying to textile and apparel goods.

Tariff Preference Levels (TPLs)

USMCA Chapter 6 contains special provisions in Annex 6–A allowing specified quantities of certain textile and apparel goods, which do not meet the rules of origin in General Note 11, HTSUS, or the Uniform Regulations regarding Rules of Origin, to claim USMCA preferential tariff treatment because the goods undergo significant processing in one or more USMCA countries. *See* USMCA Article 6.3. Specifically, Section C of Annex 6–A sets the tariff preference levels (TPLs). TPLs require that each USMCA country apply the preferential tariff treatment applicable to originating goods (as set out in the goods' schedule in USMCA Annex 2–B (Tariff Commitments)) for certain non-originating apparel goods of Chapters 61 and 62, HTSUS, and textile and apparel goods, other than wadding, of heading 9619, HTSUS; certain non-originating cotton or man-made fiber fabrics and textile goods, and certain goods of subheading 9404.90, HTSUS; and certain non-originating cotton or man-made fiber spun yarn, up to the annual quantities specified in the appendices to Annex 6–A, in the square meter equivalent measurement (SME) indicated. The SME is a unit of measurement that results from the application of the conversion factors set out in Annex 6–B, to a primary unit of measure such as a unit, dozen, or kilogram and is used in the appendices to Annex 6–A to determine the annual quantities of each specified textile and apparel good that is eligible for USMCA preferential tariff treatment under the TPLs. *See* USMCA Annex 6–A, Section A.

A USMCA country will manage each TPL on a first-come, first-served basis, and will calculate the quantity of goods that enter under a TPL on the basis of its imports. *See* USMCA Annex 6–A, Section C. When imports exceed the established annual quantitative levels, the imported goods are subject to most-favored nation (MFN) rates of duty. An importer may make a claim for preferential tariff treatment of a good under a TPL for at least one year after the good is imported, if the annual quantitative limit has not been reached and other TPL requirements are met. Goods imported under TPLs are exempt from merchandise processing fees.

Pursuant to section 103(c)(1) of the USMCA Implementation Act (19 U.S.C. 4513(c)), which grants the President proclamation authority to take the actions necessary to apply USMCA Article 6.3 and Annex 6–A, the special classification provisions in Subchapter XXIII of Chapter 98 of the HTSUS have been modified to insert U.S. Note 11 containing the Mexican and Canadian textile and apparel goods, with the SME indicated, that are eligible for special tariff treatment subject to the TPLs. Additionally, the HTSUS was modified to include the insertion of the special program indicator "S+" in the HTSUS "special" rate of duty subcolumn. The special program indicator "S+" is used when the HTSUS provides different preferential tariff treatment to each of the USMCA countries such as with TPLs.

As goods subject to TPLs are not originating goods, the certification of origin requirement does not apply for textile or apparel goods subject to a TPL claiming USMCA preferential tariff treatment. Instead, pursuant to USMCA Annex 6–A, Section C, the USMCA country where the good is being imported may require a document issued by the competent authority of a USMCA country, such as a certificate of eligibility, to provide information demonstrating that the good qualifies for duty-free treatment under a TPL, to track allocation and use of a TPL, or as a condition to grant duty-free treatment to the good under a TPL. Each USMCA country must notify the other USMCA countries if it requires a certificate of eligibility or other documentation. CBP has determined that TPLs under the USMCA will be administered using a certificate of eligibility. Thus, CBP is adding the TPL requirements, including the requirements for the certificate of eligibility, to 19 CFR part 182, subpart H.

The USMCA provisions related to claims for preferential tariff treatment generally apply, with the exception of the certification of origin requirement, to textile or apparel goods subject to TPLs, including the general verification requirements under USMCA Article 5.9 and the textile and apparel goods-specific verification provisions in USMCA Article 6.6. *See* USMCA Annex 6–A, Section C.

Textile and Apparel Good Verifications

Pursuant to USMCA Article 5.9, a USMCA country may conduct a verification to determine whether a good qualifies for preferential tariff treatment by one or more of the following means: a written request or questionnaire issued to the importer, exporter, or producer; a verification visit to the premises of the exporter or producer; for a textile or apparel good, the procedures set out in USMCA Article 6.6; or any other procedure as may be decided by the USMCA countries.

Accordingly, the USMCA provides a USMCA country with the discretion to conduct a textile or apparel good verification either pursuant to the general verification procedures set forth in USMCA Article 5.9 or pursuant to a site visit under USMCA Article 6.6. A verification under USMCA Article 5.9 is conducted to verify whether a good qualifies for preferential tariff treatment. A site visit under USMCA Article 6.6 (hereinafter referred to as a “site visit”) may only be conducted to verify textile and apparel goods. A USMCA country may perform a site visit of an exporter or producer to verify whether a textile or apparel good qualifies for USMCA preferential tariff treatment or to verify whether customs offenses with regard to a textile or apparel good are occurring or have occurred. Consequently, under

USMCA Article 6.6.3, during a site visit, a USMCA country may request access to records and facilities relevant to the claim for preferential tariff treatment or records and facilities relevant to the customs offenses being verified.

USMCA Article 1.5 defines a customs offense to mean any act committed for the purpose of, or having the effect of, avoiding a USMCA country's laws or regulations pertaining to the provisions of the USMCA governing importations or exportations of goods between, or transit of goods through, the territories of the USMCA countries, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, transshipment, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods.

A site visit's procedures and processes differ significantly from a verification visit under USMCA Article 5.9. Prior to conducting a site visit in a USMCA country, the USMCA country conducting the site visit is not required to notify the exporter or producer whose premises are going to be visited. The USMCA country conducting the site visit, however, must notify the USMCA country where the site visit will occur (the "host USMCA country"). USMCA Article 6.6 sets forth the requirements and specific information that the USMCA country that is seeking to conduct the site visit with respect to a textile or apparel good must provide to the host USMCA country, not later than 20 days prior to the date of the first visit to an exporter or producer. This information exchange between the USMCA countries is governed by the confidentiality provisions in USMCA Article 5.12 to ensure that information is treated as confidential when it is designated as confidential or is confidential under the receiving USMCA country's laws.[4] *See* USMCA Articles 5.12 and 6.9. Additionally, in accordance with USMCA Article 6.6.7(c), the USMCA countries will limit communication regarding the site visit to relevant government officials and not inform any person outside the government of the host USMCA country in advance of the site visit or provide any other information not publicly available that could undermine the effectiveness of the site visit.

[4] The exchange of information between USMCA countries is governed by 19 U.S.C. 1628. *See also* 19 CFR 182.2(b) for the USMCA confidentiality regulations setting forth the legally permitted disclosures that allow CBP to share the confidential information it receives from the public, including the disclosures CBP is authorized to make to other USMCA countries. Please also refer to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to the Marking Rules, Tariff-rate Quotas, and Other USMCA Provisions interim final rule (86 FR 35566), published in the **Federal Register** on July 6, 2021, for additional information regarding confidential information and the USMCA.

The USMCA country conducting the site visit is required to request permission in order to access the relevant records or facilities from the exporter, producer, or a person having capacity to consent on behalf of the exporter or producer, either prior to the site visit, if this would not undermine the effectiveness of the site visit, or at the time of the site visit. *See* USMCA Article 6.6.7(d). Pursuant to the Uniform Regulations regarding Origin Procedures, the USMCA country performing the site visit would inform the person from whom it is requesting permission, at the time of the request for permission, of the legal authority for the visit, the specific purpose of the visit, and the names and titles of the officials performing the visit. Pursuant to USMCA Article 6.6.7(e), if permission is denied or access to the records or facilities is denied, the site visit will not occur. If the exporter, producer, or person having capacity to consent on behalf of the exporter or producer is not able to receive the USMCA country officials to carry out the site visit, the site visit will be conducted on the following business day unless the USMCA country conducting the site visit agrees otherwise, or there is a valid reason that the site visit cannot occur at that time. An unsubstantiated reason or a reason that the USMCA country conducting the site visit does not deem acceptable may result in the consent for the site visit to be deemed denied, though the USMCA country conducting the site visit should give consideration to any reasonable alternative proposed dates. *See* USMCA Article 6.6.7(e).

On completion of a site visit, the USMCA country performing the site visit will, upon request of the host USMCA country or the exporter or producer, provide its relevant findings of the results of the site visit. *See* USMCA Article 6.6.8. Pursuant to USMCA Article 6.7, a USMCA country may deny a claim for preferential tariff treatment for a textile or apparel good for the reasons listed in USMCA Article 5.10; or, if pursuant to a site visit, the USMCA country has not received sufficient information to determine that the textile or apparel good qualifies for preferential tariff treatment; or, if the USMCA country is unable to conduct the site visit as access or permission for a site visit is denied, the USMCA country officials are prevented from completing the site visit, or the exporter or producer does not provide access to the relevant records or facilities during a site visit.

Under USMCA Article 6.6.11, if verifications of identical textile or apparel goods indicate a pattern of conduct by an exporter or producer of making false or unsupported representations that a good imported into the USMCA country qualifies for preferential tariff treatment, the USMCA country may withhold preferential treatment for identical textile or apparel goods imported, exported, or produced by that person until it is demonstrated to the USMCA country that the identical goods qualify for preferential tariff treatment.

Section 207(a)(2) of the USMCA Implementation Act (19 U.S.C. 4533(a)(2)) provides the Secretary of the Treasury authority to conduct a USMCA Article 6.6 site visit to verify whether the textile or apparel good qualifies for preferential tariff treatment under the USMCA or whether customs offenses are occurring or have occurred with respect to the good. Section 207(b) of the USMCA Implementation Act (19 U.S.C. 4533(b)(1)) sets forth the basis for issuing a negative determination of origin. Specifically, section 207(b)(1)(B)(iv) of the USMCA Implementation Act provides that, for a Chapter 6 site visit, a negative determination is a determination by the Secretary that access or permission for a site visit is denied; U.S. officials are prevented from completing a site visit on the proposed date and the exporter or producer does not provide an acceptable alternative date for the site visit; or the exporter or producer does not provide access to relevant documents or facilities during a site visit. Upon making a negative determination of origin, the Secretary may deny preferential tariff treatment under the USMCA. *See* 19 U.S.C. 4533(c)(1). The Secretary also may withhold preferential tariff treatment for identical goods based on a pattern of conduct. *See* section 207(c)(2) of the USMCA Implementation Act (19 U.S.C. 4533(c)(2)).

To address the specific requirements and procedures for filing a claim for USMCA preferential tariff treatment for a textile or apparel good subject to a TPL and to set forth the procedures related to USMCA Article 6.6 site visits, CBP has included a separate subpart H, *Textile and Apparel Goods,* in part 182 of title 19 of the CFR, that applies only to textile and apparel goods.

C. Automotive Goods

An automotive good is defined as either a covered vehicle (a passenger vehicle, light truck, or heavy truck), or a part, component, or material listed in Tables A.1, A.2, B, C, D, E, F, or G of the Appendix to Annex 4–B of the USMCA (also referred to as the "Automotive Appendix"). *See* section 202A(a)(4) and (a)(7) of the USMCA Implementation Act (19 U.S.C. 4532(a)(4) and (a)(7)). The definitions of passenger vehicle, light truck, and heavy truck are contained in the USMCA Automotive Appendix. In addition to the general rules of origin set forth in USMCA Chapter 4, the USMCA contains numerous product-specific rules of origin for automotive goods and additional provisions. These product-specific rules of origin and additional requirements are contained in the USMCA Automotive Appendix, including higher regional value content (RVC) thresholds than those in NAFTA, labor value content (LVC) requirement, steel purchasing requirement, and aluminum purchasing requirement. *See* USMCA Article 4.10 and Appendix to Annex 4–B. The importer, exporter, or producer who completes the certification of origin for a covered vehicle is certifying that the covered vehicle is an originating good that has complied with all the product-specific rules of origin, including the LVC, steel purchasing, and aluminum purchasing requirements.

Section 202A of the USMCA Implementation Act (19 U.S.C. 4532) sets forth the special rules for automotive goods, including definitions specific to automotive goods, the vehicle certification requirements for covered vehicles, the alternative staging regime provisions, the administration of the high-wage components of the LVC requirement by the Department of Labor (DOL), and the extra procedures for verification of the LVC requirement. Covered vehicles imported into the United States are only eligible for USMCA preferential tariff treatment if the producer of the covered vehicle (passenger vehicles, light trucks, and heavy trucks) submits three properly filed vehicle certifications to CBP. These vehicle certifications are the LVC certification, steel purchasing certification, and aluminum purchasing certification.

The product-specific rules of origin for automotive goods are set forth in General Note 11, HTSUS, Appendix A to part 182 of title 19 of the CFR (containing the Uniform Regulations regarding Rules of Origin), and the USMCA Automotive Appendix. To address the specific additional requirements and procedures applicable to claims for USMCA preferential tariff treatment for covered vehicles, CBP has included subpart I, *Automotive Goods,* in part 182 of title 19 of the CFR.

Steel Purchasing and Aluminum Purchasing Requirements

USMCA Article 6 of the Automotive Appendix sets forth the steel purchasing and aluminum purchasing requirements. In addition to the other product-specific rules of origin and requirements in USMCA Chapter 4, a covered vehicle imported into the United States is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets both the steel purchasing and the aluminum purchasing requirements, as set forth in USMCA Article 6 of the Automotive Appendix, section 17 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(v), HTSUS, or, if the producer is subject to an alternative staging regime, as set forth in USMCA Articles 6 and 8 of the Automotive Appendix, section 19 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(viii), HTSUS.

Generally, subject to certain exceptions and conditions, the steel purchasing and aluminum purchasing requirements provide that a passenger vehicle, light truck, or heavy truck is originating under the USMCA only if, during the calculation period specified, at least 70 percent, by value, of the vehicle producer's purchases, at the corporate level in the territories of one or more of the USMCA countries, of steel are of originating goods, and at least 70 percent, by value, of the vehicle producer's purchases at the corporate level in the territories of one or more of the USMCA countries of aluminum are of originating goods. *See* USMCA Article 6 of the Automotive Appendix and section 17(1) of the Uniform Regulations regarding Rules of Origin. In order to facilitate implementation of the steel and aluminum purchasing requirements in accordance with USMCA Article 6.3 of the Automotive Appendix, Table S of the Uniform Regulations regarding Rules of Origin contains the HS subheadings for the steel and aluminum, including structural steel or aluminum goods used in the production of covered vehicles, that are subject to the USMCA steel purchasing and aluminum purchasing requirements.

For purposes of determining whether the producer of a covered vehicle has met the steel purchasing and aluminum purchasing requirements, the producer may calculate the purchases of this steel and aluminum on the basis of the categories set forth in section 17(9) of the Uniform Regulations regarding Rules of Origin. The applicable calculation periods, over which the producer of a covered vehicle may calculate the purchases of steel or aluminum, are provided for in sections 16(4), 16(5) and 17(7) of the Uniform Regulations regarding Rules of Origin. The producer of a covered vehicle may choose different calculation periods for its steel purchasing calculation and its aluminum purchasing calculation. *See* section 17(10) of the Uniform Regulations regarding Rules of Origin.

A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle provides a properly filed certification to CBP that the producer meets its steel purchasing and aluminum purchasing requirements, and the producer has information on record to support the calculations relied on for the certification. *See* section 202A(c)(2)(A) of the USMCA Implementation Act (19 U.S.C. 4532(c)(2)(A)). The producer of a covered vehicle is required to provide both a steel purchasing certification and an aluminum purchasing certification to CBP. CBP must ensure that both the steel purchasing certification and the aluminum purchasing certification do not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(2)(B)(i). Section 202A(c)(2)(C) of the USMCA Implementation Act (19 U.S.C.

4532(c)(2)(C)) authorizes the Secretary of the Treasury to prescribe regulations for a producer of a covered vehicle to certify that it meets the steel purchasing and aluminum purchasing requirements to qualify for USMCA preferential tariff treatment. Accordingly, CBP is adding regulations to 19 CFR part 182, subpart I, setting forth the steel purchasing and aluminum purchasing requirements, and the requirements and procedures for submission of the steel purchasing certification and the aluminum purchasing certification.

LVC Requirement

USMCA Article 7 of the Automotive Appendix sets forth the LVC requirement. In addition to the other product-specific rules of origin and requirements in USMCA Chapter 4, a covered vehicle imported into the United States is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets the LVC requirement, as set forth in USMCA Article 7 of the Automotive Appendix, section 18 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(vi), HTSUS, or, if the producer is subject to an alternative staging regime, as set forth in USMCA Articles 7 and 8 of the Automotive Appendix, section 19 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(viii), HTSUS. The applicable calculation periods, over which the producer of a covered vehicle may calculate the LVC, are provided for in sections 16(4), 16(5), and 18(19) (note only the calculation periods in section 18(19) are referenced in the DOL interim regulations at 29 CFR part 810) of the Uniform Regulations regarding Rules of Origin.

The LVC requirement is administered by both CBP and DOL. Section 202A of the USMCA Implementation Act (19 U.S.C. 4532) prescribes CBP's and DOL's roles in implementing and administering the LVC requirement. Each agency has distinct areas of responsibility and CBP will work in conjunction with DOL to review the LVC certification and to perform verifications of covered vehicles that involve the LVC requirement. Pursuant to section 202A of the USMCA Implementation Act (19 U.S.C. 4532), DOL is responsible for implementing and administering the high-wage components of the LVC requirement, which include the wage components of the high-wage material and manufacturing expenditures, the high-wage technology expenditures, and the high-wage assembly expenditures. CBP is responsible for determining whether a covered vehicle meets the LVC requirement generally, based on DOL's high-wage components analysis and CBP's analysis of the valuation and other components of the LVC calculation. CBP is solely responsible for determining whether a covered vehicle is an originating good qualifying for USMCA preferential tariff treatment. The DOL regulations that set forth the high-wage components of the LVC requirement and the applicable procedures are contained in 29 CFR part 810. The DOL and CBP regulations, including the requirements and procedures, are intended to operate in conjunction with each other in accordance with 19 U.S.C. 4532(c)(1) and (e). CBP's and DOL's roles in the implementation and the administration of the LVC requirement are described in more detail below.

A covered vehicle is only eligible for USMCA preferential tariff treatment if the producer of the covered vehicle provides a properly filed certification to CBP that the production of covered vehicles by the producer meets the LVC requirement, and the producer has information on record to support those calculations. *See* section 202A(c)(1)(A) of the USMCA Implementation Act (19 U.S.C. 4532(c)(1)(A)). For purposes of determining whether a covered vehicle meets the LVC requirement, the producer of the covered vehicle must calculate the LVC requirement pursuant to General Note 11(k)(vi), HTSUS, section 18 of the Uniform Regulations regarding Rules of Origin, the requirements for the high-wage components of the LVC requirement set forth in the DOL regulations at 29 CFR part 810, and these regulations.

The USMCA Implementation Act also sets forth CBP's and DOL's responsibilities with respect to the review of the LVC certification. The Secretary of Labor, in consultation with the Commissioner of CBP, must ensure that the LVC certification does not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B)(i). Consistent with the USMCA Implementation Act and the DOL regulations, DOL's role in the LVC certification is limited to reviewing the high-wage components of the LVC certification for omissions or errors. Section 202A(c)(1)(C) of the USMCA Implementation Act (19 U.S.C. 4532(c)(1)(C)) authorizes the Secretary of the Treasury, in consultation with the Secretary of Labor, to prescribe regulations for a producer of a covered vehicle to certify that it meets the LVC requirement to qualify for USMCA preferential tariff treatment. On July 1, 2020, DOL promulgated its USMCA implementing regulations in an IFR published in the **Federal Register** (85 FR 39782), entitled "High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act," which added a new part 810 to title 29 of the CFR to address the requirements and establish procedures for vehicle producers to follow concerning the high-wage components of the LVC requirement. In this document, CBP is adding regulations to 19 CFR part 182, subpart I, setting forth the LVC requirement, and the requirements and procedures for submission of the LVC certification to CBP.

Alternative Staging Regime

The USMCA includes a standard staging regime for automotive good requirements to allow for a period of transition to lessen the burden on vehicle producers and grant them more time to meet the new requirements. Additionally, the USMCA Automotive Appendix includes provisions allowing vehicle producers to request an alternative staging regime to facilitate a longer period of transition to ensure that future production is able to meet the new requirements of the USMCA. The alternative staging regime differs from the standard staging regime by providing the vehicle producer with additional time, different phase-ins for certain product-specific rules of origin for automotive goods, and different threshold requirements.

While an alternative staging regime provides an alternative to certain product-specific rules of origin requirements for covered vehicles, it does not replace any other USMCA rules of origin or provisions of general applicability for covered vehicles claiming USMCA preferential tariff treatment. Specifically, USMCA Article 8 of the Automotive Appendix states that each USMCA country will provide that, for a period ending no later than five years after entry into force (July 1, 2025) or any other period provided for in the producer's approved alternative staging regime for passenger vehicles or light trucks and for a period ending no later than seven years after entry into force (July 1, 2027) for heavy trucks, covered vehicles may be originating under the USMCA pursuant to an alternative staging regime. An alternative staging regime is the application of the less stringent requirements of USMCA Article 8 of the Automotive Appendix to the production of covered vehicles for the duration of the alternative staging regime period to allow producers of such vehicles to bring production into full compliance with the more stringent requirements of USMCA Articles 2 through 7 of the Automotive Appendix. *See* 19 U.S.C. 4532(a)(1). As provided in USMCA Article 8.6 of the Automotive Appendix, a rule of origin applicable to a covered vehicle as a result of an alternative staging regime applies in place of any other rule of origin for that good.

Pursuant to General Note 11(k)(viii), HTSUS, including as may be further provided for in subchapter XXIII of chapter 99 of the HTSUS, and the Uniform Regulations regarding Rules of Origin, a covered vehicle may be originating pursuant to an alternative staging regime. Section 202A(d) of the USMCA Implementation Act (19 U.S.C. 4532(d)) sets forth the U.S. alternative staging regime. USTR, in consultation with the Interagency Committee on Trade in Automotive Goods established in Executive Order 13908 (February 28, 2020) ("Interagency Committee"), has the authority to set the alternative staging regime requirements, procedures, and criteria to submit petitions to use an alternative staging regime, as well as to review petitions to use an alternative staging regime, approve an alternative staging regime, approve requests for modifications of the petitions, as necessary, and make determinations that a vehicle producer subject to the alternative staging regime failed to meet the requirements of the alternative staging regime.

In accordance with 19 U.S.C. 4532(d)(1), on April 21, 2020, USTR published a notice in the **Federal Register** (85 FR 22238), entitled "Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks To Use the Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods," providing guidance to vehicle producers seeking to request an alternative staging regime for the USMCA rules of origin for automotive goods. The **Federal Register** notice specified the vehicle producers that are eligible to petition for an alternative staging regime and the requirements that vehicle producers must comply with during and after the alternative staging regime.

CBP may deny USMCA preferential tariff treatment for claims where vehicle producers fail to meet the standard automotive good requirements without an authorized alternative staging regime, or a determination has been made that the producer fails to meet the requirements of the alternative staging regime as outlined by USTR in the **Federal Register** notice. An alternative staging regime for a passenger vehicle or light truck is valid for five years (in contrast to seven years for heavy trucks) after the USMCA's entry into force unless the vehicle producer requests a longer period and that longer period is accepted by USTR. In accordance with 19 U.S.C. 4532(d)(3)(B), USTR will maintain a public list of the names of vehicle producers it has authorized to use an alternative staging regime. If USTR subsequently determines pursuant to 19 U.S.C. 4532(d)(5) that a producer failed to meet the requirements of its alternative staging regime, USTR may remove the producer's name from the public list. In that instance, the producer's vehicles will no longer be eligible for USMCA preferential tariff treatment pursuant to the previously approved alternative staging regime and notwithstanding the finality of a liquidation of an entry, the importer of any covered vehicle of that producer will be liable for the duties, taxes, and fees that would have been applicable to that vehicle if USMCA preferential tariff treatment pursuant to the alternative staging regime had not been applied plus interest assessed on or after the date of entry and before the date of the USTR determination. *See* 19 U.S.C. 4532(d)(5)(A). After expiration of the alternative staging period, all claims for USMCA preferential tariff treatment for covered vehicles must meet the rules of origin set forth in USMCA Articles 2 through 7 of the Automotive Appendix.

Recordkeeping

As explained in more detail below in section III.D. of this IFR, section 206(a) of the USMCA Implementation Act amended 19 U.S.C. 1508 to implement the USMCA recordkeeping requirements. Certain amendments apply only to covered vehicles. Pursuant to section 206(a) of the USMCA Implementation Act (19 U.S.C. 1508(b)(4)(B)), any vehicle producer whose goods are the subject of a claim for USMCA preferential tariff treatment must make, keep, and pursuant to the rules and regulations promulgated by the Secretary of the Treasury and Secretary of Labor, render for examination and inspection records and supporting documents related to the LVC, steel purchasing, and aluminum purchasing requirements. The vehicle producer must retain these records and supporting documents for a period of at least five years after the date of filing of the vehicle certifications and render them for examination and inspection upon request. *See* 19 U.S.C. 1508(b)(5)(C)(ii). The DOL recordkeeping requirements related to the high-wage components for the LVC requirement for vehicle producers are located at 29 CFR part 810.

Any importer who claims USMCA preferential tariff treatment for a good imported into the United States must make, keep, and, pursuant to the rules and regulations prescribed by the Secretary of the Treasury and the Secretary of Labor, render for examination and inspection the records and supporting documentation related to the importation, all records and supporting documents related to the origin of the good if the importer completed the certification of origin, and the transshipment records. *See* 19 U.S.C. 1508(b)(4)(A). Since the vehicle certifications and any records and supporting documents related to the LVC, steel purchasing, and aluminum purchasing certifications are records related to the origin of the good under 19 U.S.C. 1508(b)(4)(A)(ii), an importer is only required to make, keep, and render for examination and inspection these records if the importer completed the certification of origin. The DOL recordkeeping requirements, related to the high-wage components of the LVC requirement, for importers making a claim for USMCA preferential tariff treatment for covered vehicles, are located at 29 CFR part 810.

Verifications

A USMCA country may conduct a verification of a covered vehicle pursuant to the general verification means, requirements, and procedures set forth in USMCA Article 5.9. Pursuant to section 202A(e)(1) of the USMCA Implementation Act (19 U.S.C. 4532(e)(1)), as part of a general verification conducted under USMCA Article 5.9 (19 U.S.C. 4533), the Secretary of the Treasury, in conjunction with the Secretary of Labor, may conduct a verification of whether a covered vehicle complies with the LVC requirement. The USMCA Implementation Act specifies the role of CBP and the role of DOL in a verification of a covered vehicle. DOL, in cooperation with the Secretary of the Treasury, will participate in any verification of the LVC requirement by verifying whether the production of covered vehicles by a producer meets the high-wage components of the LVC requirement, including the wage component of the high-wage material and manufacturing expenditures, the high-wage technology expenditures, and the high-wage assembly expenditures. *See* 19 U.S.C. 4532(e)(2). During a verification of a covered vehicle involving the LVC requirement, the Secretary of the Treasury will verify the components of the LVC requirement not covered by DOL and determine whether the producer has met the LVC requirement. *See* 19 U.S.C. 4532(e)(3). The USMCA Implementation Act also specifies the actions that DOL will take during a verification and the nature of the information that may be requested. *See* 19 U.S.C. 4532(e)(4). In accordance with these requirements, CBP is adding verification requirements and procedures to the regulations in 19 CFR part 182, subpart I, addressing verifications of covered vehicles involving the LVC requirement. These verification requirements will apply in addition to the general verification regulations in 19 CFR part 182, subpart G. Furthermore, the DOL regulations at 29 CFR part 810 set forth the parameters, requirements, and procedures for DOL's verification of the high-wage component of the LVC requirement.

III. Amendments to the Regulations

Pursuant to section 210(a) of the USMCA Implementation Act (19 U.S.C. 4535(a)), the Secretary of the Treasury has the authority to prescribe regulations as needed to implement the USMCA. Pursuant to this authority, this IFR codifies numerous key USMCA provisions implementing the USMCA for the United States. This IFR promulgates CBP regulations to implement the USMCA requirements and procedures trilaterally agreed to by the USMCA countries under the USMCA, the Uniform Regulations regarding the Rules of Origin, and the Uniform Regulations regarding Origin Procedures. Specifically, this IFR amends existing provisions and adds new provisions to the CBP regulations to implement the additional USMCA Chapter 1 general definitions; the remaining USMCA Chapter 2 drawback and duty-deferral program provisions; the USMCA Article 2.7 temporary admission of goods provisions; the USMCA Chapter 4 product-specific rules of origin for automotive goods; the USMCA Article 5.8 recordkeeping requirements for importers, exporters, and producers; the

USMCA general origin verification requirements and procedures; the USMCA Article 5.10 determination of origin provisions; the USMCA Article 5.14 advance rulings requirements; the USMCA Article 5.15 review and appeal of determinations of origin and advance rulings provisions; the USMCA Chapter 6 product-specific rules of origin for textiles and apparel goods; and the USMCA Chapter 7 provisions related to customs administration and trade facilitation.

In order to provide transparency and facilitate their use, the majority of the USMCA implementing regulations are set forth in part 182 of title 19 of the CFR, entitled the *United States-Mexico-Canada Agreement*. Part 182 sets forth the USMCA preferential tariff treatment and other customs related provisions. This IFR amends part 182 to add regulations implementing remaining portions of USMCA Chapters 1, 2, 4, 5, and 6, as discussed above, to the existing part 182 regulatory framework. Additionally, this IFR makes amendments to other parts of title 19 of the CFR, including parts 10, 24, 113, 123, 141, 144, 163, and 174, to implement relevant provisions in USMCA Chapters 2, 5, 6, and 7.

All of the regulatory amendments made in this document implement the USMCA, the Uniform Regulations regarding Rules of Origin, and the Uniform Regulations regarding Origin Procedures, as trilaterally agreed to by the United States, Mexico, and Canada, into the CBP regulations. These regulatory amendments are also consistent with the USMCA Implementation Act (19 U.S.C. Chapter 29). The United States adopted the USMCA through the enactment of the USMCA Implementation Act, which provides CBP with the statutory authority to promulgate these additional USMCA implementing regulations appropriate to carry out the actions required by or authorized under the USMCA Implementation Act or proposed in the Statement of Administrative Action approved under 19 U.S.C. 4511(a)(2) to implement the USMCA, as required by Section 103(b)(1) of the USMCA Implementation Act (19 U.S.C. 4513(b)(1)).

A. Part 10

1. Section 10.31

Section 10.31 sets forth the temporary importations under bond (TIB) provisions for articles brought into the United States temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, HTSUS. Paragraph (f) of § 10.31 provides exceptions to the general rule that for temporary importations, a bond is required in an amount equal to double the duties and fees (or a larger amount as required by the Center of Excellence and Expertise (Center) director), which it is estimated the articles would accrue had all the articles covered by the entry been entered under an ordinary consumption entry.

USMCA Article 2.7, *Temporary Admission of Goods,* provides that each USMCA country must grant duty-free temporary admission for: (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry; (b) a good intended for display or demonstration, including its component parts, ancillary apparatus and accessories; (c) commercial samples and advertising films and recordings; and (d) a good admitted for sports purposes, admitted from the territory of another USMCA country, regardless of its origin. *See* USMCA Article 2.7.1. Under USMCA Article 2.7.2, a USMCA country may condition the duty-free temporary admission of the above-mentioned goods on certain requirements. Under Article 2.7.2(d) of the USMCA, a USMCA country may also condition the duty-free temporary admission of one of the above-mentioned goods on the requirement that the good be accompanied by security in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or importation, and releasable on exportation of the good. Section 10.31(f) currently provides that "the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry." Section 10.31(f) applies this 110 percent limitation to the goods listed in USMCA Article 2.7.1(a) through (d) when the goods are originating and applies to the goods listed in USMCA Article 2.7.1(a) and (c) when the goods are non-originating. Thus, CBP is adding a new last sentence to 19 CFR 10.31(f) to clarify that this 110 percent limitation also applies to the goods listed in USMCA Article 2.7.1(b) and (d) when the goods are non-originating. The new last sentence reads: "In the case of articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a national of Canada or Mexico, the bond shall be without surety or cash deposit in an amount equal to 110 percent of the estimated duties and fees determined at the time of entry, if the entered article is not originating, within the meaning of General Notes 11 and 12, HTSUS, in the country of which the importer is a national."

Pursuant to USMCA Article 2.7.2(a), another requirement that a USMCA country may condition the duty-free temporary admission of a good on is the good being imported by a national of another USMCA country who seeks temporary entry. Article 1.5 (Section B) of USMCA Chapter 1 defines "a national of the United States" as defined in the *Immigration and Nationality Act.* Additionally, a bond for customs duties must not be required for an originating good. *See* USMCA Article 2.7.2(d).

In accordance with these requirements, § 10.31(f) allows for the duty-free temporary importation of the remaining above-mentioned articles without a bond if the articles qualify as originating. Section 10.31(f) currently states that, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada or Mexico and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is an originating good. For this purpose, an originating good is defined as originating within the meaning of certain general notes of the HTSUS listed in § 10.31(f), in the country of which the importer is a resident.

In accordance with USMCA Article 2.7.2(a), CBP is revising the sixth sentence of 19 CFR 10.31(f) to require that the article being brought into the United States be brought in by a national of Canada or Mexico, as opposed to a resident of Canada or Mexico, to qualify as originating goods. Additionally, CBP is revising the sixth sentence of 19 CFR 10.31(f) to add General Note 11, HTSUS, to the list of applicable general notes.

Finally, CBP is revising 19 CFR 10.31(f) to clarify the general rule that, for temporary importations, a bond is required in an amount equal to double the duties and fees (or a larger amount as required by the Center of Excellence and Expertise (Center) director), which it is estimated the articles would accrue had all the articles covered by the entry been entered under an ordinary consumption entry. Fees and duties are distinct and are covered by separate articles in the General Agreement on Tariffs and Trade (GATT). Thus, CBP is revising the language in 19 CFR 10.31(f) from "duties, including fees" in both instances where it is referenced to "duties and fees" to clarify that fees are not included in duties.

2. Section 10.36a

Section 10.36a sets forth the provisions for the temporary importation of vehicles, pleasure boats, and aircraft brought into the United States by an operator for repair or alteration. Specifically, § 10.36a currently defines the phrase "for repair or alteration" with a reference to §§ 10.8, 10.490, 10.570, and 181.64 of title 19 of the CFR. The definition of "repairs or alterations" in §§ 10.490, 10.570, and 181.64 of title 19 of the CFR provides that "repairs or alterations" means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. This definition of "repairs or alterations" is included in 19 CFR 182.112, which contains the rules that apply for purposes of obtaining duty-free treatment of goods returned after repair or alteration in Canada or Mexico under the USMCA. CBP has decided that, rather than adding additional cross-references in § 10.36a to § 182.112 and the other relevant FTA regulations, CBP will add the definition of "repair or alteration" to § 10.36a to make it more transparent to the public. Thus, CBP is revising § 10.36a to remove the cross-references and to add the text of the definition of "repairs or alterations."

3. Section 10.41a

Pursuant to section 322(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1322(a)), vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to the extent that such terms and conditions are prescribed in regulations or instructions. Sections 10.41, 10.41a, and 10.41b of title 19 of the CFR set forth the qualifications for designating instruments of international traffic (IITs) and the conditions under which they may be released without entry or the payment of duty. Section 10.41a(a)(1) designates lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic as "instruments of international traffic." The Commissioner of CBP is also authorized, under § 10.41a(a)(1), to designate additional articles or classes of articles as instruments of international traffic. CBP has repeatedly held that to qualify as an instrument of international traffic, the article must be a substantial container or holder.

A container that is designated as an instrument of international traffic is deemed to remain in international traffic provided that the container exits the United States within 365 days of the date it was admitted. *See* 19 CFR 10.41a(g)(1). When such a container does not exit the United States within 365 days of the date on which it is admitted, it shall be considered to have been removed from international traffic and an entry for consumption must be made. *See* 19 CFR 10.41a(g)(3).

Currently, § 10.41a(g) does not allow for an extension beyond the prescribed 365-day time period. Any instrument of international traffic that remains in the United States for a period exceeding 365 days triggers the entry requirement imposed by § 10.41a(g)(3). However, USMCA Article 2.7.11 specifically requires that each USMCA country must extend the timeframe for temporary admission of a shipping container or other substantial holder beyond the period initially fixed at the request of the person concerned. Accordingly, CBP is revising 19 CFR 10.41a(g)(1) to allow CBP to grant an extension and permit the IIT container to remain in international traffic beyond the 365-day time period, at the request of the person who filed the application for release under § 10.41a(a)(1), when the container is designated as an instrument of international traffic and was admitted from Canada or Mexico. The request for extension should be submitted to CBP in the Automated Commercial Environment (ACE), prior to the end of the 365-day time period. The request must contain the container number, last arrival date, intended departure date, and the reason for delay in removing the container or holder from the United States. CBP will notify the individual who filed the application for release of the details of the extension in ACE.

CBP is also amending paragraph (g)(3) to clarify that a container that does not exit the United States by the date the extension expires shall be treated the same as a container, without an extension, that does not exit the United States within the prescribed 365-day time period. A container that is designated as an instrument of international traffic and granted an extension under paragraph (g)(1) will be considered to have been removed from international traffic and an entry for consumption must be made if the container does not exit the United States prior to the date of expiration of the extension granted.

4. Section 10.301

Subpart G of part 10 sets forth the provisions related to the United States-Canada Free Trade Agreement. Specifically, § 10.301 provides the scope and applicability of the United States-Canada Free Trade Agreement, including that the United States and Canada agreed to suspend operation of the Agreement from January 1, 1994. This suspension date was to coincide with the entry into force of NAFTA. With the simultaneous repeal of NAFTA (*see* section 601 of the USMCA Implementation Act) and the entry into force of the USMCA as of July 1, 2020, the United States and Canada have agreed to continue suspending operation of the United States-Canada Free Agreement.

Section 501(c) of the United States-Canada Free Trade Agreement Implementation Act of 1988 (Pub. L. 100–449; 19 U.S.C. 2112 note) sets forth the termination or suspension provisions of the United States-Canada Free Trade Agreement. In section 602 of the USMCA

Implementation Act, Congress amended section 501(c)(3) of the United States-Canada Free Trade Agreement Implementation Act of 1988 to state that the United States and Canada agreed to suspend the operation of the United States-Canada Free Trade Agreement by reason of the entry into force of the USMCA until such time as the suspension of the United States-Canada Free-Trade Agreement may be terminated. Accordingly, CBP is revising 19 CFR 10.301 to add a reference to the USMCA to indicate that the United States-Canada Free Trade Agreement continues to remain suspended with the entry into force of the USMCA and to provide the public with the relevant citation to the USMCA regulations in part 182.

5. Technical Corrections in Part 10

The implementing legislation for the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Economic Recovery Act (CBERA), as amended by the United States-Caribbean Basin Trade Partnership Act (CBTPA), trade preference programs contained the NAFTA rules of origin. *See* 19 U.S.C. 3721 and 19 U.S.C. 2702. Accordingly, the implementing regulations for these programs in part 10 of title 19 of the CFR, which followed the statutory language, contain numerous references to NAFTA. Subpart D of part 10 sets forth the textile and apparel articles under the AGOA provisions (*see* 19 CFR 10.211–10.217) and subpart E of part 10 contains the textile and apparel articles and the non-textile articles under the CBTPA provisions (*see* 19 CFR 10.221–10.237).

As stated above, on July 1, 2020, section 601 of the USMCA Implementation Act repealed the NAFTA Implementation Act and references to NAFTA became outdated. On December 27, 2020, section 602 of Title VI of the Appropriations Act set forth technical corrections to other laws, including AGOA and CBERA (as amended by CBTPA), which replaced the outdated references to NAFTA with references to the USMCA. *See* section 602(a) and (b) of Title VI of the Appropriations Act. These technical corrections are retroactively effective on July 1, 2020, the USMCA's entry into force date. *See* section 602(g) of Title VI of the Appropriations Act. Accordingly, CBP is amending §§ 10.212(l), 10.213(a)(8), 10.214(b), 10.214(c)(12), 10.222, 10.223(a)(7), 10.224(c)(12), 10.232, 10.233(b), and 10.237(b), which include various references to NAFTA (*e.g.,* definitions for "NAFTA" in §§ 10.212, 10.222, and 10.232), to include accurate references to the USMCA in accordance with the technical corrections made to 19 U.S.C. 3721 and 19 U.S.C. 2702.

B. Part 24

1. Section 24.23

Section 24.23 provides the terms and conditions for merchandise processing fees. Paragraph (c) contains the exemptions. Specifically, paragraph (c)(3) states that the ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2) will not apply to goods originating in Canada or Mexico under NAFTA within the meaning of General Note 12, HTSUS.

The USMCA also provides a merchandise processing fee exemption. USMCA Article 2.16.3 states that no USMCA country shall adopt or maintain a customs user fee on an originating good, with footnote 3 further clarifying that this commitment only applies to the United States with respect to the merchandise processing fee. In accordance with this commitment, section 203 of the USMCA Implementation Act amended section 13031(b)(10)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(10)(B)) to specify that no fee for the processing of merchandise may be charged for goods that qualify as originating goods under 19 U.S.C. 4531 or that qualify for duty-free treatment under USMCA Annex 6–A.

Accordingly, CBP is revising 19 CFR 24.23(c)(3) to clarify that originating goods and textile or apparel goods subject to a TPL, for which a claim for preferential tariff treatment under the USMCA is made, are also exempt from the merchandise processing fees. When the importer makes a claim for USMCA preferential tariff treatment, the ad valorem, surcharge, and specific fees provided for under § 24.23(b)(1) and (b)(2) do not apply to goods originating under the USMCA within the meaning of General Note 11, HTSUS (*see also* 19 U.S.C. 4531), or to textile or apparel goods subject to a TPL that qualify for preferential tariff treatment under § 182.82 (*see also* Annex 6–A of the USMCA), that are entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

2. Section 24.36

Section 24.36 sets forth the procedures and conditions under which a refund of excessive duties, taxes, fees, or interest will be due when discovered upon, or prior to, liquidation or reliquidation of an entry or reconciliation. Paragraph (a)(1) provides that the refund shall include interest on the excess money deposited with CBP and the dates that such interest shall start to accrue, including for proper claims filed under 19 U.S.C. 1520(d) and subpart D of part 181. Since the statutory authority for this regulation, 19 U.S.C. 1505, allows for interest on excess moneys to accrue for claims made under 19 U.S.C. 1520(d), CBP is removing the specific reference to subpart D of part 181. The addition of the cross-reference to subpart D of part 181, which contains the NAFTA post-importation claim provisions, unintentionally limited § 24.36 to apply only to NAFTA post-importation claims when 19 U.S.C. 1505 allows for interest on refunds on 19 U.S.C. 1520(d) claims.

C. Part 123

Section 123.0

Part 123 contains the special regulations pertaining to CBP procedures at the Canadian and Mexican borders including provisions governing reports of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival. Section 123.0 sets forth the scope of part 123 and provides the relevant cross-references to the other applicable parts of title 19 of the CFR that address CBP procedures for Canadian and Mexican goods. Accordingly, CBP is revising § 123.0 to add the applicable cross-reference to the USMCA regulations in part 182.

D. Part 163

Part 163, *Recordkeeping,* sets forth the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records. Pursuant to section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508(a)), any owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise into the customs territory of the United States, files a drawback claim, transports or stores 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 the United States, or an agent of any of these parties, or a person whose activities require the filing of a declaration or entry or both, must make, keep, and render for examination and inspection certain records. The USMCA recordkeeping requirements are set forth in USMCA Article 5.8 and the Uniform Regulations regarding Origin Procedures. USMCA Article 5.8.1 provides the types of records that importers must maintain and the retention periods while Article 5.8.2 includes a list of records applicable exporters and producers must maintain and the retention periods. To implement these USMCA recordkeeping requirements, section 206 of the USMCA Implementation Act amended 19 U.S.C. 1508(b) and (e)(1) to add the recordkeeping requirements and penalty provisions that apply to USMCA exports and imports.

CBP is amending part 163, as applicable, to include these recordkeeping requirements. Also, as noted in the scope of part 163, § 163.0, which was previously amended in a prior rulemaking, additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the USMCA are contained in part 182. If the importer, exporter, or producer who is required to maintain records pursuant to parts 163 and 182 does not maintain, or denies access to, the records or documentation required under 19 U.S.C. 1508, CBP may deny USMCA preferential tariff treatment. Failure to comply with these recordkeeping requirements by U.S. importers, exporters, or producers may result in the imposition of penalties under 19 U.S.C. 1508(e)(1).

1. Exporter and Producer Recordkeeping Responsibilities

In accordance with 19 U.S.C. 1508(a), the part 163 recordkeeping provisions generally do not apply to exporters and producers, with a few notable exceptions. These exceptions are set forth in § 163.2(c) and include applicable NAFTA exporters and USMCA exporters and producers. CBP, in a prior rulemaking, amended § 163.2(c)(2) to add USMCA exporters and producers who complete a certification of origin, or USMCA producers who provide a written representation, for a good exported from the United States to Canada or Mexico, to the list of persons required to maintain records in accordance with part 163. Accordingly, U.S. USMCA exporters and producers must maintain the required records pursuant to the requisite retention periods in part 163 and in the prescribed format as described in § 163.5. An exporter or producer who completes a certification of origin or a producer that provides a written representation must maintain all records necessary to demonstrate that the good is originating, including the records specified in USMCA Article 5.8.2(a), (b), and (c), for five years after the date on which the certification of origin was completed. *See also* 19 U.S.C. 1508(b)(2). To implement this USMCA requirement, CBP, in a prior rulemaking, added 19 CFR 182.21(c) requiring U.S. exporters or producers exporting from the United States to Canada or Mexico to maintain these records.

Additionally, in accordance with 19 U.S.C. 1508(b), CBP has promulgated recordkeeping requirements on foreign exporters and producers whose goods are imported into the United States under the USMCA. It is important to note that these requirements are set forth in 19 CFR part 182, not part 163, because the requirements are imposed on foreign exporters and producers whose goods are imported into the United States, and not on the U.S. exporters and producers covered by part 163. *See* 19 CFR 163.2(c)(2). These additional provisions concerning records maintenance and examination applicable to exporters and producers under the USMCA include 19 CFR 182.73(a)(2) and 182.74(c), which require exporters and producers subject to a verification to make the records available for inspection by a CBP official during the verification, 19 CFR part 182, subpart H, which requires that exporters and producers subject to a USMCA Article 6.6 site visit make certain records available, and 19 CFR part 182, subpart I, which establishes additional recordkeeping requirements for producers of covered vehicles whose vehicles are imported into the United States in accordance with 19 U.S.C. 1508(b)(4)(B), including the requirement in § 182.103 for vehicle exporters and producers to maintain records.

2. Importer Recordkeeping Responsibilities

USMCA Article 5.8.1 requires that an importer making a claim for USMCA preferential tariff treatment maintain certain records for a period of no less than five years from the date of importation of the good. In accordance with USMCA Article 5.8.1, 19 U.S.C. 1508(b)(4)(A) requires that any importer who claims preferential tariff treatment under the USMCA for a good imported into the United States must make, keep, and, pursuant to the regulations prescribed by the Secretary of the Treasury and the Secretary of Labor, render for examination and inspection: the records and supporting documentation related to the importation; all records and supporting documents related to the origin of the good, if the importer completed the certification of origin; and records and supporting documents related to transshipment.

To implement this USMCA requirement, CBP, in a prior rulemaking, added these importer recordkeeping requirements to 19 CFR 182.15. CBP also added 19 CFR 182.73(a)(2), which requires importers subject to a verification to make the records available for inspection by a CBP official during the verification. Importers making a claim for USMCA preferential tariff treatment for covered vehicles imported into the United States must meet the additional recordkeeping requirements set forth in subpart I of part 182, as described in more detail in section III.F., *Subpart I—Automotive Goods,* of this IFR, and must maintain any records related to the high-wage component of the LVC requirement as required by DOL pursuant to 29 CFR part 810. In accordance with 19 U.S.C. 1508(b)(4)(A)(ii), CBP's additional recordkeeping responsibilities for importers of covered vehicles are dependent on whether the importer completed the certification of origin. Specifically, as provided in § 182.104, importers who complete the certification of origin must maintain the vehicle certifications and all the records and supporting documents related to whether the covered vehicle is originating under the LVC, steel purchasing, and aluminum purchasing requirements while an importer who claims USMCA preferential tariff treatment for a covered vehicle based on a certification of origin completed by the exporter or producer must only maintain the records and supporting documents related to the vehicle certifications that are in the importer's possession.

CBP is amending part 163, as described below, to implement the recordkeeping requirements contained in 19 U.S.C. 1508(b)(4)(A), USMCA Article 5.8, the Uniform Regulations regarding Origin Procedures, and 19 CFR part 182.

a. Section 163.1

Pursuant to § 163.2(a), all importers must maintain, produce, and make the records available for inspection and examination as required under part 163. Section 163.1(a)(1) defines the terms "records," for purposes of part 163, as any information made or normally kept in the ordinary course of business that pertains to any activity listed in § 163.1(a)(2). The term "records" includes any information required for the entry of merchandise (the (a)(1)(A) list) and other information pertaining to, or from which is derived, any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in § 163.1(a)(2). Thus, CBP is amending § 163.1(a)(2) to redesignate paragraph (xviii) as (xix) and add a new paragraph (xviii) to include USMCA records in the list of activities. Specifically, the new paragraph (xviii) will provide for the maintenance of any documentation in support of a claim for preferential tariff treatment under the USMCA pursuant to part 182, including the certification of origin. These records must be maintained by the importer pursuant to § 163.2(a) and the U.S. exporter or producer pursuant to § 163.2(c)(2). Vehicle certifications are not specified in § 163.1(a)(2)(xviii) because, as explained above, the importer is not required to maintain the vehicle certifications and supporting documentation in all instances. Instead, the specific requirements for importers of covered vehicles are addressed by adding 19 CFR 182.104.

b. Section 163.7

Section 163.7 describes the parties to whom CBP may issue a summons to appear and produce records or to give relevant testimony under oath or both, during the course of an investigation, audit, or other inquiry. This includes, among others, importers and any person who exported merchandise or knowingly caused merchandise to be exported to a NAFTA country. CBP is revising § 163.7(a)(2) to add any person who exported merchandise, or knowingly caused merchandise to be exported, to a USMCA country.

c. Appendix to Part 163—Interim (a)(1)(A) List

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production of records, within a reasonable time after demand by CBP if such record is required by law or regulation for the entry of the merchandise, whether or not CBP required its presentation at the time of entry. Pursuant to 19 U.S.C. 1509(e), CBP is required to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509(a)(1)(A)). This list is commonly referred to as "the (a)(1)(A) list." CBP is amending section IV of the appendix to part 163 (the (a)(1)(A) list) to add the USMCA documents to the list of records or information required for the entry of merchandise. Accordingly, CBP is adding a reference to 19 CFR 182.13, which sets forth the USMCA importer's obligations, to the (a)(1)(A) list to indicate that USMCA records that the importer may have in support of a USMCA claim for preferential tariff treatment, including the certification of origin, are required entry documents. Vehicle certifications are not included in the (a)(1)(A) list because, as explained above, the importer is not required to maintain the vehicle certifications and supporting documentation in all instances. CBP is also revising the § 10.307 listing in the (a)(1)(A) list to clarify that the United States-Canada Free Trade Agreement (CFTA) provisions continue to be suspended while USMCA remains in effect.

E. Part 174

Part 174, *Protests,* sets forth the general protest procedures pursuant to 19 U.S.C. 1514 for the administrative review of decisions of the port director and Center director. This part contains the requirements for the filing of protests, amendments of protests, review of protests, requests for accelerated disposition, and provisions dealing with further administrative review. Pursuant to 19 U.S.C. 1514(c)(3), a protest of a decision must be filed with CBP within 180 days after the date of liquidation or reliquidation, or if such a date is inapplicable, the date of the decision as to which protest is made.

In extending the protest rights under part 174 to USMCA importers and qualifying exporters or producers, CBP is fulfilling its USMCA commitments under Articles 5.15.1 and 7.15. Article 5.15.1 of the USMCA requires each USMCA country to grant substantially the same rights of review and appeal for determinations of origin to exporters and producers who completed a certification of origin as are granted to importers in its territory. Accordingly, an importer, or a qualified exporter or producer, may file a protest to contest a denial of USMCA preferential tariff treatment of a claim made at entry or a denial of a USMCA post-importation claim. Pursuant to 19 CFR 174.21, the Center director generally must review and act on a protest within two years from the date the protest was filed. If the protest is allowed in whole or in part, the goods will be eligible for USMCA preferential tariff treatment and CBP will refund the duties in accordance with § 174.29.

Article 7.15 of the USMCA addresses the review and appeal of customs determinations. Article 7.15 provides, in part, that the USMCA country must provide the protesting party its decision in the review or appeal in writing and include the reasons for the decision. Article 7.15 also requires that each USMCA country ensure that any person to whom a customs administration issues a determination has access to an administrative appeal or review by an administrative authority higher than or independent of the employee or office that issued the determination, and access to a quasi-judicial or judicial review or appeal made at the final level of administrative review. In accordance with Article 7.15, if the protest is denied, CBP will issue a notice of denial of a protest to any person filing a protest or his/her agent, with the exception of those in which accelerated disposition was requested and no action has been taken within 30 days. The notice of denial will include a statement of the reasons for the denial and a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under 19 U.S.C. 1514. *See* 19 CFR 174.30. Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action with the United States Court of International Trade in accordance with 28 U.S.C. 2632. *See* 19 CFR 174.31.

1. Section 174.12

Section 174.12 sets forth the procedures for filing a protest. Specifically, paragraph (a) states who may file a protest, including the importer, consignee, or their surety, any person paying or receiving a refund of any charge or exaction, any person seeking entry or delivery, any person filing for drawback, and any of these persons' authorized agents. USMCA Article 5.15.1 requires each USMCA country to grant substantially the same rights of review and appeal of determinations of origin to USMCA exporters and producers, who have completed a certification of origin for a good that is the subject of the determination of origin, as it provides to its importers.

Pursuant to 19 U.S.C. 1514(c)(2)(E), any USMCA exporter or producer of merchandise subject to a determination of origin as provided for under 19 U.S.C. 4531 may file a protest, if the exporter or producer completed and signed the certification of origin. Accordingly, CBP is amending § 174.12 by redesignating paragraph (a)(6) as paragraph (a)(7) and by adding a new paragraph (a)(6) stating that, with respect to a determination of origin under subpart G of part 182, any exporter or producer of the merchandise subject to the determination, who completed and signed the USMCA certification of origin, may file a protest. CBP is also amending the redesignated paragraph (a)(7) to allow any authorized agent of the exporter or producer described in paragraph (a)(6) to file a protest on their behalf, subject to the provisions of § 174.3.

While CBP will issue a determination of origin to USMCA exporters and producers of textile or apparel goods subject to TPLs, as explained in more detail in section III.F., *Subpart H-Textile and Apparel Goods,* of this IFR, as required under § 182.75(b), these exporters and producers may not file a protest of this determination of origin under part 174, unless the exporter or producer is also acting as the importer of record. As explained above, pursuant to 19 U.S.C. 1514(c)(2)(E), any USMCA exporter or producer of merchandise subject to a determination of origin as provided for under 19 U.S.C. 4531 may file a protest if the exporter or producer completed and signed the certification of origin. Since goods subject to TPLs are not originating goods, the certification of origin requirement does not apply to textile or apparel goods subject to a TPL claiming USMCA preferential tariff treatment. Accordingly, CBP has no statutory authority to allow these exporters or producers to file a protest under part 174.

Additionally, it is important to note that while USMCA exporters and producers may, to the extent described above, file a protest of a determination of origin, USMCA exporters and producers may not file a protest of a marking determination under the USMCA, unless the exporter or producer is also acting as the importer of record. As noted in the scope of part 174 (19 CFR 174.0), Canadian and Mexican exporters and producers seeking administrative review and appeal of adverse marking decisions under NAFTA had the right to appeal and such rights were set forth in part 181. These specific rights of review and appeal for marking determinations were explicitly contained in Article 510 of NAFTA. However, the USMCA does not provide any such rights. Section 209 of the USMCA Implementation Act struck the language from subsection (k) of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304(k)), that provided these specific petition rights, such as adverse marking decisions, for NAFTA exporters and producers. Thus, these specific rights and procedures are not provided for under the USMCA or the USMCA Implementation Act, or the relevant statutory or regulatory authority for protests in 19 U.S.C. 1514 and 19 CFR part 174. Accordingly, Canadian and Mexican exporters and producers may not request administrative review of and appeal of marking decisions under the USMCA.

2. Section 174.13

Section 174.13 sets forth the required contents of a protest. Paragraph (a)(9) currently requires the protestant to include a declaration as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback. CBP is revising § 174.13(a)(9) to remove the references to the certificate of delivery and the certificate of manufacture and delivery because these certificates were eliminated by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122, February 24, 2016). Accordingly, paragraph (a)(9) will only require a declaration as to whether the entry is the subject of drawback or if there is the ability for a party to make such entry the subject of drawback. CBP is also updating the list of cross-references in § 174.13(a)(9) to include the USMCA drawback provision, § 182.50, and the relevant part 190, *Modernized Drawback,* provision, § 190.81.

3. Section 174.15

Section 174.15 provides for the consolidation of separate protests relating to the same category of merchandise covered by an entry filed by different parties. Pursuant to 19 U.S.C. 1514(c)(1), only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. Separate protests filed by different parties with respect to any one category of merchandise or with respect to a USMCA determination of origin under 19 U.S.C. 4531 are deemed to be part of a single protest. *See* 19 U.S.C. 1514(c)(1). Section 174.15(b) addresses the consolidation of multiple protests concerning a determination of origin for NAFTA transactions, if a NAFTA exporter or producer files one of the protests. In accordance with 19 U.S.C. 1514(c)(1), CBP is revising § 174.15(b) to include determinations of origin for USMCA transactions, if a USMCA exporter or producer described in § 174.12(a)(6) files one of the protests. Paragraph (b)(1) of § 174.15 covers USMCA transactions where all the interested parties who filed protests specifically submit written requests for consolidation. In these instances, all the interested parties are deemed to have waived their rights to confidentiality under § 182.2. Paragraph (b)(2) covers USMCA transactions where no such written requests for consolidation are submitted. In these instances, the interested parties are not deemed to have waived their rights to confidentiality under § 182.2. A separate notice of the decision will be issued to each interested party and must adhere to the USMCA confidentiality provisions set forth in § 182.2.

4. Section 174.22

Pursuant to 19 U.S.C. 1515(a), unless a request for an accelerated disposition of a protest is filed, CBP must review the protest and allow or deny the protest in whole or in part within two years from the date the protest is filed. Subsection (b) of 19 U.S.C. 1515 allows for a request for accelerated disposition of a protest to be submitted to CBP at any time concurrent with or following the filing of the protest, in accordance with 19 U.S.C. 1514. Section 174.22 of title 19 of the CFR sets forth the procedure for filing a request for an accelerated disposition of a protest.

Section 202A(e)(6)(A) of the USMCA Implementation Act (19 U.S.C. 4532(e)(6)(A)) provides that when a protest of a decision regarding the eligibility for USMCA preferential tariff treatment of a covered vehicle relates to DOL's analysis of the high-wage components of the LVC requirement, the Secretary of Labor will conduct an administrative review of the portion of the decision relating to such requirements and provide the results of that review to the CBP Commissioner. The DOL regulations at 29 CFR part 810 contain the administrative review procedures of DOL's initial analysis when notified by CBP of a protest involving DOL's analysis of the high-wage components of the LVC requirement. Pursuant to 29 CFR part 810, DOL will strive to issue a decision within one year from the date that it receives the notice of protest from CBP and will provide a determination containing the results of the administrative review to CBP.

Section 202A(e)(6)(B) of the USMCA Implementation Act (19 U.S.C. 4532(e)(6)(B)) explicitly states that an importer may not request accelerated disposition under 19 U.S.C. 1515 of a protest against a decision related to the DOL's analysis of the high-wage components for a covered vehicle's LVC requirement. Accordingly, CBP is revising 19 CFR 174.22(a) to limit the availability of the accelerated disposition of a protest. CBP is adding a sentence to § 174.22(a) stating that the accelerated disposition of a protest is not available for protests involving eligibility for USMCA preferential tariff treatment of a covered vehicle if the protest relates to the DOL's analysis of the high-wage components of the LVC requirement as described in 19 CFR part 182, subpart I, and 29 CFR part 810.

5. Section 174.29

Section 174.29 provides the conditions under which CBP allows or denies protests and describes the process through which the Center director will remit or refund any duties, charge, or exaction found to be collected in excess if the protest is allowed. Specifically, § 174.29 states that if a protest filed by an exporter or producer related to a NAFTA determination of origin is allowed in whole or in part, any monies found to have been collected in excess shall be refunded to the party who paid the monies even if such party did not file an appropriate and timely protest. CBP is revising this language to add a cross-reference to § 174.12(a)(6), which applies to protests filed by a qualified exporter or producer with respect to a USMCA determination of origin.

F. Part 182

Part 182, *United States-Mexico-Canada Agreement,* implements the duty preference and related customs provisions applicable to goods imported under the USMCA. CBP is amending part 182 of title 19 of the CFR (19 CFR part 182) to promulgate additional remaining USMCA implementing regulations related to USMCA Chapters 1, 2, 4, 5, and 6. Currently, part 182 contains a significant portion of the USMCA implementing regulations and a framework for the remaining subparts. The existing part 182 substantive provisions include Subpart A (General Provisions), which contains the scope, general definitions, and confidentiality provisions, Subparts B (Import Requirements), C (Export Requirements), D (Post-Importation Duty Refund Claims), numerous substantive provisions related to drawback in subpart E (Restrictions on Drawback and Duty-Deferral Programs), F (Rules of origin), G (Origin Verifications and Determinations), J (Commercial Samples and Goods Returned after Repair or Alteration), K (Penalties), and Appendix A, which contains the Uniform Regulations regarding Rules of Origin, which were trilaterally agreed upon by the United States, Mexico, and Canada.

This document amends part 182 to revise § 182.0 (Scope) and subpart G (Origin Verifications and Determinations), and to add general definitions in § 182.1, additional drawback and duty-deferral provisions in Subpart E (Restrictions on Drawback and Duty-Deferral Programs), and implementing regulations in subparts H (Textile and Apparel Goods) and I (Automotive Goods).

Subpart A—General Provisions

1. Scope

Section 182.0 contains the scope of part 182. Part 182 implements the duty preference and related customs provisions applicable to imported and exported goods under the USMCA. While § 182.0 was added in a prior rulemaking, CBP is revising the section to provide the relevant cross-references to the other parts of the CBP regulations that apply to the USMCA. Accordingly, CBP is adding a new sentence to § 182.0 to clarify that additional provisions applicable to the USMCA are contained in parts 10, 24, 163, 174, and 177 of title 19 of the CFR.

In addition to the CBP regulations in parts 10, 24, 163, and 174 that are being amended in this document, CBP is also including a cross-reference to part 177. Part 177, *Administrative Rulings,* allows CBP to issue rulings to importers and other interested parties. Applying the advance ruling requirements and procedures in part 177 of title 19 of the CFR (19 CFR part 177) to all advance rulings related to USMCA transactions fulfills CBP's commitment under USMCA Article 7.5 requiring each USMCA country to issue written advance rulings, prior to the importation of a good into its territory, regarding the treatment the good will receive at the time of importation. While no amendments to part 177 are necessary to implement USMCA Articles 5.14 and 7.5, CBP is including the cross-reference to part 177 in § 182.0 to clarify that part 177 applies to advance rulings related to USMCA transactions. CBP believes this clarification is needed since § 177.0 specifically excludes advance rulings related to NAFTA transactions from the scope of part 177. CBP wishes to further clarify that while producers are not explicitly granted the right to request a ruling pursuant to § 177.1(c), CBP considers a Canadian or Mexican producer of a good imported into the United States under the USMCA, a Canadian or Mexican producer of a material that is used in the production of a good imported into the United States under the USMCA, and a Canadian or Mexican exporter of a material used in the production of a good under the USMCA to be persons with a direct and demonstrable interest who have the right to request a ruling pursuant to § 177.1(c), in accordance with USMCA Article 7.5.2. Please note that CBP publishes its advance rulings on the Customs Rulings Online Search System (CROSS), available on the publicly accessible website, *https://rulings.cbp.gov/home.*

2. Definitions

Section 182.1 sets forth the general definitions applicable to part 182. Chapter 1 of the USMCA sets forth the general and country-specific definitions to be applied throughout the USMCA, unless otherwise noted. Since § 182.1 contains the definitions of the common terms that are used in multiple places in part 182, it includes definitions from 19 U.S.C. 4502, several Chapters of the USMCA, and the Uniform Regulations regarding Rules of Origin set forth in Appendix A to part 182. General definitions containing references to specific HTSUS subheadings, if these subheadings were trilaterally negotiated and agreed upon under the USMCA, contain additional language clarifying that the subheadings that apply are those HTSUS subheadings that were in effect on July 1, 2020, the date that the USMCA entered into force. Additional definitions that are not common terms throughout part 182 and are applicable only to the Uniform Regulations regarding Rules of Origin are set forth in Appendix A to part 182.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

Subpart E of part 182 (19 CFR 182.41–182.55) sets forth the provisions regarding drawback claims and duty-deferral programs, as provided for under Article 2.5 of the USMCA, and applies to any good that is a “good subject to USMCA drawback” within the meaning of 19 U.S.C. 4534. Drawback, as generally provided for in section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), is the refund or remission, in whole or in part, of certain duties, taxes, and fees imposed and paid under Federal law upon entry or importation. Article 1.5 of the USMCA defines a “duty deferral program” to include measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, “maquiladoras,” and inward processing programs.

The requirements and procedures set forth in subpart E for USMCA drawback are in addition to the general definitions, requirements, and procedures for drawback claims set forth in part 190 of title 19 of the CFR, unless otherwise specified. Further, the requirements and procedures of subpart E are also in addition to those for manipulation, manufacturing, and smelting and refining warehouses contained in parts 19 and 144, for FTZs under part 146, and for temporary importations under bond in part 10.

CBP previously promulgated a significant portion of the USMCA implementing regulations for drawback and duty-deferral programs in subpart E of part 182 of title 19 of the CFR. Sections 182.41, 182.46, 182.49, 182.51, 182.52, and 182.54 in subpart E are unchanged from the prior rulemaking. In this document, CBP is revising § 182.42(c) to provide clarification regarding the USMCA requirements. The other specific regulatory amendments provided for in this document are, for the most part, the result of subsequent policy determinations and supplement the provisions in subpart E that were added in the prior rulemaking. Accordingly, CBP is also revising §§ 182.43, 182.45(c), 182.47, as appropriate, revising § 182.50(b), which was reserved in the prior rulemaking, and adding a new § 182.44(h) and (i). CBP is also adding §§ 182.48, *Person entitled to receive drawback,* and 182.53, *Collection and waiver or reduction of duty under duty-deferral programs,* to subpart E, which were not previously reserved in the prior rulemaking. Sections 182.48 and 182.53 generally follow the corresponding regulation in part 181, with some conforming and nomenclature changes made. However, with respect to the FTZ provisions in § 182.53, it should be noted that the USMCA Implementation Act did not include an exception to the rules of origin for goods produced in an FTZ, which was included for NAFTA in section 202 of the NAFTA Implementation Act and prevented a claim of U.S. origin on non-originating materials used in the production of a good when those goods are produced in an FTZ. This exception was enacted in subsequent legislation, the Appropriations Act, which was retroactive to July 1, 2020. Section 601(b) of Title VI of the Appropriations Act amended section 202 of the USMCA Implementation Act (19 U.S.C. 4531(c)(3)) to prohibit, under USMCA, producers from using non-originating materials in an FTZ manufacturing to claim U.S. origin.

Finally, CBP is adding a new section to subpart E, which was also not previously reserved in the prior rulemaking and for which there is no corresponding regulation in part 181. Section 182.55, *Goods exported from duty-deferral programs that are not subject to USMCA drawback within the meaning of 19 U.S.C. 4534,* is being added to subpart E to provide clarity regarding the timing of claims for when the importer or its agent is claiming that a good is not subject to USMCA drawback within the meaning of 19 U.S.C. 4534.

Subpart G—Origin Verifications and Determinations

Subpart G of part 182 (19 CFR 182.71–182.76) contains the general USMCA verification and determination of origin provisions. These regulations were promulgated during a prior rulemaking. CBP is amending certain sections of subpart G in this document to add the relevant cross-references for textile and apparel goods and for automotive goods.

Section 182.71 contains the applicability provision for subpart G. CBP is adding two sentences to § 182.71 to clarify that there are additional verification requirements and procedures applicable to automotive goods in subpart I and alternative verification means and procedures for textile and apparel goods in § 182.83 of subpart H.

Section 182.75 sets forth the determination of origin provisions. Specifically, § 182.75(c) contains the provisions that apply to negative determinations of origin when CBP intends to deny USMCA preferential tariff treatment. Paragraph (c)(2) contains the reasons that CBP may deny USMCA preferential tariff treatment as set forth in USMCA Article 5.10.2. CBP is amending § 182.75(c)(2) to reflect the application of the USMCA Article 5.10.2 reasons for denial related to textile and apparel goods and automotive goods to ensure that paragraph (c)(2) contains a comprehensive list of the reasons for denial with the appropriate cross-references.

Section 182.75(c)(4) describes when CBP will issue a negative determination of origin and the determination of origin contents. Currently, § 182.75(c)(4) states that, in addition to the contents of the determination of origin set forth in § 182.75(a), unless CBP determines that there is a pattern of conduct of false or unsupported representations pursuant to § 182.76, a negative determination of origin will provide the exporter or producer with the information necessary to file a protest as provided for in 19 U.S.C. 1514(e) and part 174. CBP is revising § 182.75(c)(4) to remove the language "unless CBP determines that a pattern of conduct of false or unsupported representations pursuant to § 182.76" to fulfill our commitment to USMCA Article 7.15. As stated above, Article 7.15 of the USMCA addresses the review and appeal of customs determinations. Article 7.15.2 provides, in part, that the USMCA country must provide each person to whom it issues an administrative determination with access to information on how to request reviews and appeals. Thus, to fulfill this USMCA commitment, CBP must provide all exporters and producers, who are issued a negative determination of origin, with the information necessary to file a protest. In practice, CBP has already been providing all importers, exporters, and producers issued a negative determination of origin with this information necessary to file a protest since the USMCA entered into force.

It is important to note that, as discussed above, while CBP will issue a determination of origin to USMCA exporters and producers of textile or apparel goods subject to TPLs as required under § 182.75(b), these exporters and producers may not file a protest of this determination of origin under part 174, in accordance with 19 U.S.C. 1514(c)(2)(E), unless the exporter or producer is also acting as the importer of record. Accordingly, since 19 U.S.C. 1514(e) only authorizes CBP to disclose the entry information necessary to file a protest to the exporters or producers referred to in 19 U.S.C. 1514(c)(2)(E), CBP will not provide exporters or producers of textile or apparel goods subject to TPLs with the information necessary to file a protest when issuing a negative determination under § 182.75(c)(4).

Subpart H—Textile and Apparel Goods

Subpart H of part 182 (19 CFR 182.81–182.83) contains the USMCA textile and apparel good provisions, as provided for in USMCA Chapter 6, including the TPL provisions and the site visit provisions. The applicable definitions, including the definition of a textile or apparel good, are set forth in § 182.1, which is the general definitions section of part 182.

1. Tariff Preference Level

A TPL is defined in § 182.1 to mean a quantitative limit for certain non-originating textile or apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in § 182.82. Section 182.82, *Claim for preferential tariff treatment under tariff preference level,* contains the TPL requirements and procedures. These regulations are in accordance with USMCA Annex 6–A, which as explained in detail above in Section II.B. of this IFR, governs the USMCA preferential tariff treatment of eligible non-originating textile or apparel goods subject to a TPL. As these goods are non-originating, the rules of origin set forth in General Note 11, HTSUS, and Appendix A to part 182 do not apply.

While a claim for USMCA preferential tariff treatment is typically made pursuant to § 182.11(b), a claim for preferential tariff treatment for textile or apparel goods subject to a TPL is made pursuant to § 182.82. Paragraph (a) of § 182.82, *Basis of claim,* sets forth the requirements that must be met for an importer to make a claim for USMCA preferential tariff treatment, including an exemption from the merchandise processing fee, for textile or apparel goods subject to a TPL, including that the goods be eligible for a TPL claim, that the annual quantitative limit has not been reached for the subject TPL, and that the claim is based on a certificate of eligibility. Paragraph (b), *Goods eligible for TPL claims,* lists the specific types of textile or apparel goods that are eligible for TPLs. These eligible goods and the quantitative limits that are eligible for TPLs are contained in U.S. Note 11, Subchapter XXIII, Chapter 98, HTSUS. Paragraph (c), *Making a TPL claim,* provides the procedure that an importer must follow to properly file a claim for USMCA preferential tariff treatment. A TPL claim must be filed as an entry type “02” as it is subject to quantitative restraints.

As a TPL claim is for non-originating textile or apparel goods, an importer who makes a claim for preferential tariff treatment, pursuant to § 182.82(c), is not required to submit a certification of origin, as otherwise required under § 182.12. Instead, an importer who makes a claim for preferential tariff treatment subject to a TPL, pursuant to § 182.82(c), must submit, at the request of CBP, a certificate of eligibility issued by an authorized official of the government of Mexico or Canada. The number assigned to the certificate of eligibility is required to be submitted to CBP when the TPL claim is filed in accordance with the procedures in paragraph (c). Paragraph (d), *Certificate of eligibility,* sets forth the requirements and procedures for submitting the certificate of eligibility.

Pursuant to USMCA Annex 6–A, Section C, an importer may make a claim for preferential tariff treatment of a good under a TPL at least one year after the good is imported, if the annual quantitative limit has not been reached and the other TPL requirements are met. While post-importation claims for USMCA preferential tariff treatment are otherwise filed in accordance with 19 U.S.C. 1520(d) and subpart D of part 182, post-importation claims for preferential tariff treatment for textile or apparel goods subject to a TPL are not. Under 19 U.S.C. 1520(d), CBP may reliquidate an entry to refund any excess duties paid at importation on a good qualifying for preferential tariff treatment under the rules of origin for certain enumerated trade agreements for which a claim for preferential tariff treatment was not filed at importation. Since goods that qualify for preferential tariff treatment subject to a TPL do not qualify as originating under the rules of origin, there is no statutory authority to apply 19 U.S.C. 1520(d) to these claims. Accordingly, paragraph (e), *Post-importation claims,* sets forth the right to make a post-importation claim for preferential tariff treatment within one year after the date of importation of the good pursuant to the filing procedures created for these post-importation claims in paragraph (e)(2). The post-importation claim must be filed with a certificate of eligibility dated the same calendar year that the textile or apparel goods were imported. Post-importation claims will not be granted if the quantitative limits for the subject TPL for the year the entry summary, or equivalent documentation, is accepted by CBP, have already been reached.

An importer making a TPL claim for USMCA preferential tariff treatment under § 182.82(c) must adhere to the recordkeeping requirements in § 182.15 and part 163. Section 182.15, *Maintenance of records,* requires an importer claiming USMCA preferential tariff treatment to maintain all records and documents that demonstrate that the good qualifies for preferential tariff treatment, for a minimum of five years from the date of importation of the good. For a TPL claim, these records and documents would include a copy of the certificate of eligibility.

Paragraph (f), *Denial of preferential tariff treatment,* sets forth the circumstances when CBP may deny preferential tariff treatment that are only applicable to TPLs. Additional reasons CBP may deny preference are set forth in § 182.75(c)(2). Paragraph (g), *Verifications,* notes that CBP will conduct verifications of goods subject to TPLs using the same verification means and procedures that CBP has the discretion to utilize for all textile and apparel goods. Specifically, CBP has the discretion to choose to conduct a verification of textile or apparel goods subject to TPLs pursuant to either the general verification means and procedures set forth in part 182, subpart G, or pursuant to the site visit procedures in § 182.83 of subpart H.

2. Textile and Apparel Goods Verification Procedures

Section 182.83, *Verifications of textile and apparel goods,* contains the requirements and procedures for a textile or apparel good verification conducted pursuant to a USMCA Article 6.6 site visit. As described in more detail above in Section II.B. of this IFR, for textile and apparel goods, CBP has two alternative means of conducting a verification. CBP may conduct a verification for purposes of determining whether a textile and apparel good qualifies for preferential tariff treatment using the USMCA Article 5.9 general verification means described in § 182.72(a) and the procedures set forth in subpart G of part 182. Alternatively, as described in § 182.83(a), CBP may conduct a site visit to the premises of the exporter or producer of textile or apparel goods in Mexico or Canada for the purpose of determining that a textile or apparel good qualifies for preferential tariff treatment or that customs offenses with regard to a textile or apparel good are occurring or have occurred. The term "customs offenses" is defined in § 182.1, which provides the general definitions that are applicable to part 182. Paragraph (b) of § 182.83, *Verification of a material during a site visit,* allows for the verification of a material, that is used in the production of a textile or apparel good, during a site visit.

Paragraph (c), *Site visit procedures,* sets forth the site visit procedures applicable to the exporter or producer in Mexico or Canada whose premises CBP is going to visit during the site visit. Pursuant to USMCA Article 6.6, while CBP must notify the Canadian or Mexican customs administration of CBP's intention to conduct the visit prior to conducting a site visit in Canada or Mexico, CBP is not required to notify the exporter or producer whose premises are going to be visited prior to conducting the site visit if doing so will undermine the effectiveness of the verification. Paragraph (c) provides the consent requirements for the site visit, what happens when the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer is not able to receive CBP on the initial date of the site visit, and the records and facilities that CBP may request access to during the site visit.

Paragraph (d), *Right to request report of the site visit,* provides the circumstances under which the exporter or producer may request that CBP send its relevant findings from the written report of the results of the site visit upon completion of the site visit. Paragraph (e), *Denial of preferential tariff treatment,* states the reasons that CBP may deny preferential tariff treatment to any textile or apparel good imported or produced by the person that is the subject of the verification.

Paragraph (f), *Intent to deny and determination of origin,* states that, after CBP has completed a site visit pursuant to § 182.83, CBP will issue a determination of origin in accordance with the requirements and procedures set forth in § 182.75, with the exception of § 182.75(c)(1). CBP is extending the notification of the intent to deny to more parties than is required under USMCA Article 6.6.9. Specifically, in accordance with § 182.75(c)(3), CBP will send an intent to deny to the importer, and the exporter or producer who is subject to the verification and either completed the certification of origin or provided information directly to CBP during the verification, subject to the confidentiality provisions in § 182.2. By cross-referencing the procedures set forth in § 182.75 in subpart H, including the intent to deny, CBP is ensuring that consistent determination of origin procedures and notifications are applied to all textile and apparel good verifications regardless of whether CBP chooses to conduct the verification pursuant to the USMCA Article 5.9 general verification procedures in subpart G or the site visit procedures in § 182.83. Paragraph (g), *Pattern of conduct for textile or apparel goods,* provides that CBP may withhold preferential tariff treatment to identical textile or apparel goods imported or produced by an exporter or producer when CBP determines that a pattern of conduct of false or unsupported representations exists.

Subpart I—Automotive Goods

Subpart I of part 182 (19 CFR 182.91–182.107) contains the USMCA automotive good provisions, as provided for in USMCA Chapter 4 and the Uniform Regulations regarding Rules of Origin. The applicable definitions, including the definitions of automotive good, covered vehicle, passenger vehicle, light truck, and heavy truck, are set forth in § 182.1, which is the general definitions section of part 182. Subpart I of part 182 applies to all automotive goods, including new and used covered vehicles, entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. As noted in the applicability section of subpart I, § 182.91, covered vehicles claiming USMCA preferential tariff treatment must also meet the applicable requirements and follow the applicable procedures contained throughout part 182.

An importer may only make a claim for USMCA preferential tariff treatment if the covered vehicle complies with the USMCA rules of origin, including the product-specific rules of origin, and the additional requirements and procedures set forth in subpart I. Section 182.92, *Claim for preferential tariff treatment for covered vehicles,* specifies additional requirements that a covered vehicle must meet to make a claim for USMCA preferential tariff treatment, including the LVC requirement in § 182.93, the steel purchasing and aluminum purchasing requirements in § 182.94, and certifications attesting that the vehicle producer has complied with the LVC, steel purchasing, and aluminum purchasing certification requirements under §§ 182.95, 182.96, and 182.97. When making a claim for preferential tariff treatment under § 182.11(b) or § 182.32, an importer must also submit the unique identifier assigned by CBP for each of the LVC, steel purchasing, and aluminum purchasing certifications that form the basis for the covered vehicle's eligibility for preferential tariff treatment. These unique identifiers provide CBP with the ability to link the importation of the covered vehicle to the specific vehicle certifications that form the basis for the covered vehicle's eligibility for preferential tariff treatment and to demonstrate compliance with the vehicle certification requirements.

1. LVC, Steel Purchasing, and Aluminum Purchasing Requirements and Certifications

Sections 182.93, *Labor value content (LVC) requirement,* and 182.94, *Steel purchasing and aluminum purchasing requirements,* specify the requirements that must be met in General Note 11, HTSUS, and Appendix A to part 182, the applicable requirements if the producer is subject to an alternative staging regime, the calculation methods, and the choice of calculation periods. With respect to the LVC requirement, DOL is responsible for implementing and administering the high-wage components of the LVC requirement. The DOL regulations are contained in 29 CFR part 810. The producer of a covered vehicle must use the rules set forth in the DOL regulations, including for high-wage material and manufacturing expenditures, high-wage technology expenditures, and high-wage assembly expenditures, to properly calculate and determine the high-wage components of the LVC requirement. CBP determines whether a covered vehicle meets the LVC requirement generally based on an analysis of the high-wage components by DOL and CBP's determination of the components of the LVC requirement not governed by DOL, including the valuation and other components of the LVC calculation. CBP has sole authority to determine whether a covered vehicle qualifies for USMCA preferential tariff treatment.

Sections 182.95, *Labor value content (LVC) certification,* 182.96, *Steel purchasing certification,* and 182.97, *Aluminum purchasing certification,* contain the respective vehicle certification provisions. A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the LVC requirement, as described in § 182.93, the steel purchasing requirement, as described in § 182.94, and the aluminum purchasing requirement, as described in § 182.94. Unless specifically exempt under an alternative staging regime, all three vehicle certifications must be submitted to CBP and considered properly filed for a covered vehicle to qualify for USMCA preferential tariff treatment. The producer of the covered vehicle must have information in its possession that proves the accuracy of the calculations relied on for the certifications.

Paragraph (c) of §§ 182.95, 182.96, and 182.97 contains the data elements for each of the vehicle certifications. With respect to § 182.95(c)(1), CBP wishes to clarify that the alternative unique identification number of the producer's choosing must be a publicly available identifier, such as the examples provided in § 182.95(c)(1) and may not be an identification number generated internally by the producer's organization, such as a business partner ID or supplier code.

CBP has added several data elements in §§ 182.95(c), 182.96(c), and 182.97(c), in addition to the list of data elements contained in the U.S. Implementing Instructions issued on June 30, 2020 (and in the DOL regulations at 29 CFR part 810), for each of the vehicle certifications to ensure that CBP has all the information needed to establish that the producer meets the LVC, steel purchasing, and aluminum purchasing requirements. The data elements that have been added to the CBP regulations for the steel purchasing and aluminum purchasing certifications are: any Manufacturers Identification Code (MID), Federal Employer Identification Number (EIN), or Importer of Record number (IOR) associated with the producer; the vehicle category for which the steel or aluminum purchases are calculated, as specified in section 17(9) of Appendix A to part 182; and the name and address for each steel or aluminum producer, service center, or distributor relied upon in calculating the total value of purchases of steel or aluminum that qualify as originating goods and any MID, EIN, or IOR numbers associated with those entities. These enumerated data elements are necessary to clarify information in the certifications and consist of information that the certifier, who is completing the vehicle certification, must already have to certify compliance with the steel purchasing and aluminum purchasing requirements. CBP has also added LVC certification data elements to further align the LVC certification with the steel purchasing and aluminum purchasing requirements, to clarify information in the certification, and to collect information that the vehicle producer already has when making the underlying LVC calculation. The added LVC certification data elements are: the name, title, and contact information of the certifier (the person completing the LVC certification); the LVC calculation used to determine that the production of the covered vehicles meets the LVC requirement in General Note 11(k)(vi), HTSUS, 19 CFR 182.93(c), and Appendix A to part 182 including the resulting LVC percentage; and the authorized certifier's signature, date signed, and certifying statement. An LVC certification submitted to CBP must include all the information in § 182.95(c) and the DOL regulations at 29 CFR part 810.

Any vehicle certification submitted to CBP pursuant to § 182.95(f), 182.96(f), or 182.97(f) on or after the delayed compliance date of May 19, 2025 must contain the full list of data elements in § 182.95(c), 182.96(c), or 182.97(c) and the DOL regulations at 29 CFR part 810, with vehicle certifications for covered vehicles subject to an exemption or different requirements under an alternative staging regime required to comply with the requirements set forth in § 182.95(b), 182.96(b), or 182.97(b), and § 182.106(c). Revised vehicle certifications resubmitted to CBP under the procedures set forth in § 182.95(i), 182.96(i), or 182.97(i), which were initially submitted to CBP prior to the IFR's delayed compliance date, are not required to contain the full list of data elements. Furthermore, vehicle producers are not required to request a modification of a properly filed certification submitted prior to the IFR's delayed compliance date, under § 182.95(k), 182.96(k), or 182.97(k), solely due to the absence of the full list of data elements in § 182.95(c), 182.96(c), or 182.97(c). However, any new, modified vehicle certification that the producer submits to CBP on or after the IFR's delayed compliance date, pursuant to § 182.95(k), 182.96(k), or 182.97(k), must include all the data elements in § 182.95(c), 182.96(c), or 182.97(c) for the entirety of the certification period, with vehicle certifications for covered vehicles subject to an exemption or different requirements under an alternative staging regime required to comply with the requirements set forth in § 182.95(b), 182.96(b), or 182.97(b) and § 182.106(c). Please see below for additional information regarding the resubmission and modification process.

In order to grant the trade additional time to adjust its business practices to comply with the new USMCA automotive good requirements, CBP, in accordance with its USMCA Phase I Implementation Policy, allowed vehicle producers until December 31, 2020 to submit the required vehicle certifications needed to receive preferential tariff treatment beginning July 1, 2020. However, following this initial submission, the submission date for vehicle certifications is based on each producer's chosen calculation period(s) under § 182.93(d) and (e) or § 182.94(c) and (d). Pursuant to §§ 182.95(f), 182.96(f), and 182.97(f), for any vehicle certification submitted to CBP on or after the delayed compliance date of May 19, 2025, the producer of the covered vehicle must submit the LVC, steel purchasing, and aluminum purchasing certifications to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period. Vehicle certifications submitted to CBP prior to the IFR's delayed compliance date are not required to comply with the 90-day submission requirement. The IFR's delayed compliance date allows vehicle producers sufficient time to timely submit the vehicle certifications at least 90 days prior to the beginning of the certification period and to include the additional required data elements.

It is important to note that the calculation period does not necessarily align with the certification period. The calculation period is the period over which the LVC requirement was calculated or the qualifying steel or aluminum purchases were made for a given vehicle category. In contrast, the certification period is the period over which the vehicle certification is effective for the vehicles produced (or exported, if applicable) within that period for a given vehicle category. Since the certification period determines which vehicles are eligible for USMCA preferential tariff treatment, the certification period is the relevant period for determining when the vehicle producer must submit the vehicle certification. Different certification periods are applicable depending on the calculation period that the vehicle producer selects to calculate the LVC, steel purchasing, and aluminum purchasing requirements for U.S. imports. The producer may select from several different calculation periods, such as the previous fiscal year of the producer, previous calendar year, and the other calculation periods set forth in § 182.93(d) and (e) or § 182.94(c) and (d). If the producer relies on a calculation period based on its fiscal year, the producer must indicate in the vehicle certification that the calculation period corresponds to its fiscal year. A vehicle producer may choose different calculation periods for its LVC calculation, its steel purchasing calculation and its aluminum purchasing calculation. Paragraph (j) of §§ 182.95, 182.96, and 182.97 sets forth the applicable certification periods based on the calculation period that the producer chooses.

The producer of the covered vehicle must submit the LVC, steel purchasing, and aluminum purchasing certifications to CBP through an authorized electronic data interchange system or other specified means. *See* §§ 182.95(f), 182.96(f), and 182.97(f). Details on how to submit the certifications can be found at the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA and https://trade.cbp.gov/USMCA/s/*. Currently, vehicle producers can file vehicle certifications through a portal on the CBP website at *https://trade.cbp.gov/USMCA/s/automotive-certification-request.* If the USMCA portal is down, certifications can be emailed to *USMCAautoRoO@cbp.dhs.gov.* CBP will notify the public on our website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA* and *https://trade.cbp.gov/USMCA/s/,* and update the regulations, as needed, if the means of submission are updated at a later date.

After the producer submits the LVC, steel purchasing, and aluminum purchasing certification(s) to CBP, the certification(s) will be reviewed for omissions and errors. An omission would include, for example, the vehicle producer failing to include with its vehicle certification one of the data elements listed in § 182.95(c), 182.96(c), or 182.97(c). An error would include, for example, a vehicle certification that is based on the wrong type of information, such as calculating the producer's purchases of steel over a calculation period not provided for in § 182.94(c) and (d). For the LVC certification, in accordance with 19 U.S.C. 4532(c)(1)(B)(i), the Secretary of Labor, in consultation with the Commissioner of CBP, will ensure that the LVC certification does not contain omissions or errors before the certification is considered properly filed. CBP is solely responsible for ensuring that the steel purchasing and aluminum purchasing certifications do not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(2)(B)(i).

Paragraph (g) of §§ 182.95, 182.96, and 182.97 details the review process for omissions and errors. If the vehicle certification is determined to be properly filed, the certification is effective for the certification period specified in paragraph (j). Upon receipt of a notification that an omission or error was discovered, the producer will have five business days to submit to CBP a revised vehicle certification, correcting the error or omission that CBP or DOL discovered or providing an explanation of why the producer believes that the certification contains no omissions or errors. The submission of this revised certification is an opportunity for the producer to correct the discovered error or omission or provide an explanation before a determination is made regarding whether the certification is properly filed. If the revised certification contains an omission or error or if no revised certification is submitted within the prescribed timeframe, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

While the vehicle certification is being reviewed for omissions and errors, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 for such covered vehicles until the producer has received notice from CBP that the certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed. As described in the U.S. Implementing Instructions, at this time, the review process for omissions and errors may take up to 120 days. Consequently, this provision facilitates trade by allowing importers to make claims for USMCA preferential tariff treatment while CBP and DOL, if applicable, are still reviewing the vehicle certification(s). If the producer receives notice that a certification has not been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle, of that determination within 30 days of receipt of the CBP notice. *See* 19 CFR 182.95(h), 182.96(h), and 182.97(h). If a vehicle certification is not properly filed, an importer, upon receipt of notification from the producer, must promptly and voluntarily correct any claims for covered vehicles for which that vehicle certification formed the basis for the vehicle's eligibility for preferential tariff treatment, pay any duties that may be due, and submit the required statement pursuant to § 182.11(c).

Within 10 business days of receiving the notification from CBP that the vehicle certification was determined to be not properly filed under paragraph (g), the producer may resubmit the certification in accordance with §§ 182.95(i), 182.96(i), and 182.97(i). This resubmission process allows the vehicle producer, after the initial vehicle certification was determined to be not properly filed, to submit a new vehicle certification for the same category and same calculation period. This new certification would undergo the same review for omissions and errors process that the initial certification underwent, as described in paragraph (g). The producer may resubmit a vehicle certification under §§ 182.95(i), 182.96(i), and 182.97(i) for the same category and same calculation period up to two times per certification period. During the resubmission period, after the vehicle certification has been determined to not be properly filed, an importer does not have a reasonable basis for claiming that the covered vehicle meets the product-specific rules of origin, and thus, an importer should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32. The importer may only submit a claim for USMCA preferential tariff treatment after the producer receives notice that the resubmitted certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed. An importer may make a post-importation claim, if it qualifies, under § 182.32, for covered vehicles entered for consumption, or withdrawn from warehouse for consumption, during the vehicle certification resubmission period when the certifications that form the basis for the covered vehicle's eligibility for preferential tariff treatment have subsequently been determined to be properly filed.

During the certification period, if there are any material changes to the information contained in the vehicle certification that would affect its validity, for example, changes to the vehicle certification period, vehicle category chosen, or the calculation period of LVC requirement and/or steel or aluminum purchases, the producer must request a modification of the properly filed certification pursuant to § 182.95(k), 182.96(k), or 182.97(k). This modification process, as described in paragraph (k), only applies to vehicle certifications that have been previously considered properly filed. If CBP determines that the new, modified certification is properly filed under paragraph (g) or (i), the new certification supersedes the former certification and the new certification is effective for the certification period specified in paragraph (j). Accordingly, the new, modified vehicle certification that the producer submits to CBP must include all the applicable information in §§ 182.95(c), 182.96(c), and 182.97(c) for the entirety of the certification period and should not be limited to the modification. Additionally, the producer must submit a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity of the certification. Within 30 days of receiving notice that the new certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

Section 182.98, *Appeal of the determination that LVC, steel purchasing, or aluminum purchasing certification is not properly filed,* sets forth the appeals process, following the review of the second resubmission of the vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2), for the vehicle producer to appeal a determination that the LVC, steel purchasing, or aluminum purchasing certification is not properly filed. While CBP believes that it is unlikely that a vehicle producer will need to resubmit a vehicle certification twice and file an appeal, CBP is establishing this appeals process, pursuant to its general USMCA rulemaking authority in 19 U.S.C. 4535(a), to provide a recourse for appeal and a means for a vehicle producer to submit arguments to CBP explaining why it believes the vehicle certification should be considered properly filed. Once it has been determined that a vehicle certification has not been properly filed, the covered vehicle is not considered an originating good under the USMCA, and the importer may not make a claim for USMCA preferential tariff treatment. Given that the appeal of a determination that a vehicle certification is not properly filed is not a matter subject to protest under 19 U.S.C. 1514(a)(1) through (a)(7), neither the vehicle producer nor the importer may file a protest under 19 U.S.C. 1514 or part 174, if a claim for USMCA preferential tariff treatment of the covered vehicle has not yet been made when the determination is made. Since there is no existing recourse enabling the vehicle producer or the importer to appeal a determination that the vehicle certification is not properly filed in this scenario, CBP has established this new appeals process, which is limited to vehicle certifications. Section 182.98 contains the scope of the appeal, the procedures, and the applicable timelines. The appeal cannot be filed until both opportunities for resubmission of a vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2) have been completed. When an appeal involves DOL's review of the LVC certification for omissions and errors, CBP will coordinate with DOL regarding the appeal, as necessary. An importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 for covered vehicles until the producer has received notice that the certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed. At that time, if the vehicle certifications have been determined to be properly filed, the importer may make a post-importation claim, if it qualifies, under § 182.32.

2. Motor Vehicle Averaging

For the purpose of calculating the RVC or LVC of a covered vehicle, the producer of the vehicle may elect to average the RVC or LVC calculation. These averaging elections are described in § 182.100, *Motor vehicle averaging elections.* To elect RVC averaging, the producer must comply with all the RVC averaging provisions set forth in section 16 of Appendix A of part 182, including the averaging categories and averaging periods. To elect LVC averaging, the vehicle producer must comply with all the LVC averaging provisions set forth in section 18 of Appendix A of part 182, including the averaging categories. The LVC averaging periods are set forth in § 182.93(d) and (e). A producer who elects to average its RVC or LVC calculation must separately average covered vehicles that are subject to an alternative staging regime. The producer may not average its RVC or LVC across covered vehicles that are subject to an alternative staging regime and covered vehicles that are not subject to an alternative staging regime.

When filing an RVC averaging election, the averaging election must include the required data elements in § 182.100(d). CBP is discontinuing use of the motor vehicle averaging election form, CBP Form 447, which was required when filing an RVC averaging election under NAFTA, and instead allowing the RVC averaging election data elements to be provided to CBP in a free format. The LVC averaging election is a new election under USMCA. When filing an LVC averaging election, the averaging election must include the required data elements in § 182.100(e). Pursuant to § 182.100(f), a vehicle producer who files an RVC or LVC averaging election must submit, at the request of CBP, a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made.

A producer of a covered vehicle who elects to average its RVC or LVC calculation must file an averaging election with CBP pursuant to § 182.100(c) at least 10 days before the first day of the producer's fiscal year during which the vehicles will be exported, or such shorter period as CBP may accept. The producer may request a shorter period by contacting CBP via email. Details on how to submit the averaging elections can be found at the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA* and *https://trade.cbp.gov/USMCA/s/*. Currently, vehicle producers can file the RVC or LVC averaging elections through a portal on the CBP website at *https://trade.cbp.gov/USMCA/s/automotive-certification-request.* If the USMCA portal is down, the averaging elections can be emailed to *USMCAautoRoO@cbp.dhs.gov.* CBP will notify the public on our website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA, https://trade.cbp.gov/USMCA/s/,* and update the regulations, as needed, if the means of submission are updated at a later date.

Section 182.101, *Averaging for other automotive goods,* provides the applicable provisions in Appendix A of part 182 governing the averaging of automotive parts and other vehicles. This regulation clarifies that the producer is not required to file an RVC averaging election when averaging the RVC of these automotive goods.

3. Required Year-End Reconciliation

Section 16(9) and section 17(11) of the Uniform Regulations regarding Rules of Origin, contained in Appendix A of part 182, require a year-end analysis of the actual costs of the RVC if the producer calculated the RVC based on estimated costs, and a year-end analysis of the actual purchases of steel or aluminum made over the calculation period if the producer calculated the steel or aluminum purchases on the basis of estimates. Depending on the certification period that a vehicle producer chooses, the vehicle certification may be based in whole or in part on projected costs or projected purchases. Section 182.102, *Required year-end reconciliation to actual costs when estimated costs or purchases used,* requires the producer of a covered vehicle, who has calculated the RVC or LVC of its vehicles or its steel or aluminum purchases on the basis of estimates, to conduct a reconciliation at the end of the producer's fiscal year to the actual costs incurred or the actual purchases made. CBP has added the LVC year-end reconciliation requirement to ensure that the producer has met all the applicable USMCA requirements during that period with actual, not projected, costs. Therefore, this year-end reconciliation is required irrespective of whether the producer filed an averaging election pursuant to § 182.100. If, based on the year-end reconciliation performed, the covered vehicle does not satisfy the RVC or LVC requirement on the basis of the actual costs, or the steel or aluminum purchasing requirement on the basis of the actual purchases, the producer must make the notifications contained in paragraph (b) that the vehicle is a non-originating good. In addition to the notifications required pursuant to sections 16(9) and 17(11) of Appendix A of part 182, CBP is also requiring the producer to notify CBP to ensure that CBP is aware that the producer did not meet the USMCA requirements for preferential tariff treatment.

4. Recordkeeping Requirements

Pursuant to section 206(a) of the USMCA Implementation Act (19 U.S.C. 1508(b)(4)(B)), any vehicle producer whose goods are the subject of a claim for USMCA preferential tariff treatment must make, keep, and pursuant to the rules and regulations promulgated by the Secretary of the Treasury and Secretary of Labor, render for examination and inspection records and supporting documents related to the LVC, steel purchasing, and aluminum purchasing requirements. Section 182.103, *Producer and exporter recordkeeping responsibilities for records relating to LVC, steel purchasing, and aluminum purchasing requirements,* sets forth the producer of the covered vehicle's recordkeeping responsibilities and the exporter who completed the certification of origin's recordkeeping responsibilities. The vehicle producer must make and keep, for a minimum of five years from the date that the vehicle certifications were submitted to CBP, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and all records and supporting documents necessary to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. CBP encourages vehicle producers subject to an alternative staging regime to keep these records and supporting documentation for longer than the minimum five years required to demonstrate compliance with the LVC, steel purchasing and aluminum purchasing requirements should USTR later make a determination that the vehicle producer failed to meet the requirements for the alternative staging regime under 19 U.S.C. 4532(d)(5). The vehicle producer must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810. The records must be capable of being retrieved upon lawful request and must be produced to CBP or DOL upon request.

Pursuant to § 182.103(b), an exporter who completed the certification of origin for a covered vehicle must keep, for a minimum of five years from the date that the certification of origin was completed, the LVC certification, steel purchasing certification, aluminum purchasing certification, and all records and supporting documents to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The exporter must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810. The records must be capable of being retrieved upon lawful request and must be produced to CBP or DOL upon request.

CBP may deny USMCA preferential tariff treatment, as described in § 182.107, when vehicle producers or exporters do not meet these recordkeeping requirements.

Section 182.104, *Importer's responsibility to maintain records relating to LVC, steel purchasing, and aluminum purchasing requirements,* contains the importer of a covered vehicle's recordkeeping responsibilities. All importers claiming USMCA preferential tariff treatment, including importers of covered vehicles, are required to comply with the recordkeeping requirements in 19 CFR parts 163 and 182, and must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810. The extent of the importer's additional recordkeeping responsibilities for covered vehicles is contingent on whether the importer completed the certification of origin. If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the exporter or producer, the importer must maintain, for a minimum of five years from the date of importation of the covered vehicle, any records and supporting documents in the importer's possession relating to the vehicle certifications. If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the importer, the importer must maintain, in accordance with 19 U.S.C. 1508(b)(4)(A), for a minimum of five years from the date of importation of the covered vehicle, the vehicle certifications, and all records and supporting documents necessary to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. These records must be maintained by importers as provided in § 163.5 and produced to CBP or DOL upon request. CBP encourages all importers who import vehicles subject to an alternative staging regime to keep the records and supporting documentation for longer than the minimum five years required to demonstrate compliance with the LVC, steel purchasing and aluminum purchasing requirements. These records and supporting documents will be valuable should USTR later make a determination that the vehicle producer failed to meet the requirements for the alternative staging regime under 19 U.S.C. 4532(d)(5).

5. Verifications

CBP will initiate and conduct verifications of automotive goods in accordance with the general verification and determination of origin provisions in subpart G of part 182. Section 182.105, *Verification of automotive goods,* contains additional verification provisions that are applicable for automotive good verifications, including when a verification involves the LVC requirement. CBP will conduct a verification of a covered vehicle involving the high-wage components of the LVC requirement in conjunction with DOL. Accordingly, the provisions in § 182.105 set forth DOL's and CBP's roles in the verification, the additional requirements that the importer, exporter, or producer must comply with, and any added procedures necessitated by DOL's involvement in the verification.

CBP will initiate all verifications of covered vehicles pursuant to the verification means in § 182.72(a), including a request for information, a questionnaire, and/or a verification visit. When CBP initiates a verification of a covered vehicle and the verification involves whether the covered vehicle meets the LVC requirement, CBP will notify the producer of the covered vehicle that CBP has initiated a verification of the covered vehicle and advise the producer whether the verification involves the high-wage components of the LVC requirement, necessitating DOL's involvement. DOL is responsible, pursuant to 19 U.S.C. 4532(e) and the DOL requirements and procedures in 29 CFR part 810, for conducting the verification of the high-wage components of the LVC requirement and determining whether the covered vehicle meets the high-wage components of the LVC requirement. CBP is responsible for verifying all other aspects of the LVC requirement, and is ultimately responsible for determining whether the covered vehicle meets the LVC requirement, the requirements in 19 CFR part 182, and whether the covered vehicle qualifies for USMCA preferential treatment.

During a verification of a covered vehicle, the importer, exporter, and producer must provide all records requested by CBP or DOL and make these records available for inspection by the appropriate CBP or DOL official as provided for in § 182.105(c). As stated in § 182.105(b), CBP or DOL also may conduct a verification of a part, component, or material that is used in the production of a covered vehicle. During the verification of such a part, component, or material, the producer of the part, component, or material must provide CBP or DOL with all the records requested and make these records available for inspection by the appropriate CBP or DOL official, and failure to do so may result in a determination that the part, component, or material is non-originating.

CBP will determine whether the covered vehicle meets the LVC requirement and qualifies for USMCA preferential tariff treatment based in part on DOL's determination on whether the covered vehicle complied with the high-wage components of the LVC requirement, and DOL's verification findings and analysis. CBP will then issue a determination of origin to the qualifying parties pursuant to § 182.75. An importer, exporter, or producer, who has the right to file a protest pursuant to § 174.12(a)(6), may protest a CBP determination of origin under 19 U.S.C. 1514 and part 174. When a protest involves DOL's analysis of the high-wage components of the LVC requirement, CBP will coordinate with DOL regarding the review of the protest. DOL is responsible, pursuant to 19 U.S.C. 4532(e)(6)(A), for conducting an administrative review of its initial analysis pursuant to its administrative review procedures in the DOL's regulations at 29 CFR part 810 and providing a determination containing the results of the administrative review to CBP. As explained in more detail in section III.E. of this IFR, CBP will review and act on the protest pursuant to the procedures and requirements set forth in part 174.

6. Alternative Staging Regime

As described in more detail above in section II.C. of this IFR, a covered vehicle may be originating pursuant to an alternative staging regime. Section 182.106, *Alternative staging regime,* sets forth the conditions under which a covered vehicle is eligible for USMCA preferential tariff treatment under an alternative staging regime. Pursuant to paragraph (c) of § 182.106, a producer of a covered vehicle is required to submit to CBP a separate vehicle certification that covers only those vehicles subject to the alternative staging regime under certain circumstances. If the terms of the alternative staging regime specifically exempt the producer from the LVC, steel purchasing, or aluminum purchasing requirement (including when the producer qualifies for NAFTA 403.6 treatment), then the producer must submit to CBP a vehicle certification for that LVC, steel purchasing, or aluminum purchasing requirement covering only those vehicles subject to the alternative staging regime. If the terms of the alternative staging regime contain different requirements from sections 13 through 18 of Appendix A to 19 CFR part 182, then the producer must submit to CBP a vehicle certification for that LVC, steel purchasing, or aluminum purchasing requirement that covers only those vehicles subject the alternative staging regime. This additional vehicle certification must meet the requirements set forth in §§ 182.95, 182.96, and 182.97, as applicable, with the exception of the certifying statement, and must contain the additional information, including the certifying statement, as set forth in paragraph (c) of this section.

7. Reasons for Denial of USMCA Preferential Tariff Treatment of Covered Vehicles

In addition to the general reasons for denial set forth in § 182.75(c)(2) of subpart G, CBP may deny a claim for USMCA preferential tariff treatment of covered vehicles for the additional reasons set forth in § 182.107, *Denial of preferential tariff treatment of a covered vehicle.* These reasons for denial relate specifically to the

LVC, steel purchasing, and aluminum purchasing requirements, the vehicle certifications, and the additional recordkeeping requirements for covered vehicles. If CBP determines that one of these reasons for denial set forth in § 182.107 applies to a vehicle certification that forms the basis for a claim's eligibility for USMCA preferential tariff treatment, CBP may deny USMCA preferential tariff treatment for any claim which uses that vehicle certification as a basis for eligibility for USMCA preferential tariff treatment regardless of whether the importer lacks prior knowledge of the vehicle producer's failure to meet the LVC, steel purchasing, or aluminum purchasing requirements because of the unique nature of the vehicle certifications.

G. Other Conforming Amendments

CBP is also amending certain sections of title 19 of the CFR, including §§ 10.31(h), 113.62(a), 141.0a(a), 141.0a(f), 141.68(i), and 144.38(b), to add the appropriate cross-references to the USMCA drawback and duty-deferral program provisions alongside existing references to NAFTA duty-deferral and drawback provisions.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, considers public comments in deciding on the content of the final amendments, and publishes the final amendments at least 30 days prior to their effective date. This rule is exempt from APA rulemaking requirements pursuant to 5 U.S.C. 553(a)(1) as a foreign affairs function of the United States because it implements the preferential tariff treatment and customs related provisions of the USMCA, which is a specific trilateral agreement negotiated between the United States, Mexico, and Canada. This IFR implements trilaterally agreed upon provisions in the USMCA, the Uniform Regulations regarding the Rules of Origin, and the Uniform Regulations regarding Origin Procedures. The regulatory amendments promulgated in this IFR fulfill the United States' USMCA commitments. This IFR amends 19 CFR part 182 to add regulations implementing provisions from USMCA Chapters 1, 2, 4, 5, and 6, as well as the USMCA Uniform Regulations regarding the Rules of Origin and the Uniform Regulations regarding Origin Procedures. Additionally, this IFR makes the amendments to 19 CFR parts 10, 24, 113, 123, 141, 144, 163, and 174 to implement provisions from USMCA Chapters 2, 5, 6, and 7 as well as the USMCA Uniform Regulations regarding Origin Procedures. This IFR meets the U.S.

commitments to the other USMCA countries, as agreed to in the USMCA, and fulfills our international obligations.

B. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review), as reaffirmed by Executive Order 13563 (Improving Regulation and Regulatory Review) and amended by Executive Order 14094 (Modernizing Regulatory Review), directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Orders 12866, as amended by Executive Order 14094, and 13563. Because this rule involves a foreign affairs function of the United States by implementing a specific trilateral agreement negotiated between the United States, Mexico, and Canada, the rule is not subject to the provisions of Executive Orders 12866, as amended by Executive Order 14094, and 13563.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs (OIRA) designated this rule as a “major rule,” as defined by 5 U.S.C. 804(2).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

E. Paperwork Reduction Act

The collection of information in this document was submitted to OMB for review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). Approval and assigned OMB control number are pending. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. These regulations provide for a new collection of information for USMCA's automotive goods requirements. Vehicle producers will be required to submit three new vehicle certifications to CBP, including the labor value content (LVC) certification, the aluminum purchasing certification, and the steel purchasing certification. In addition, vehicle producers may submit motor vehicle averaging elections, including an averaging election for labor value content (LVC) and regional value content (RVC). This information is used by CBP to determine if vehicles imported from Canada and Mexico are entitled to preferential tariff treatment under USMCA.

The proposed information collection requirements will result in the following estimated burden hours:

Aluminum Purchasing Certification

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 37.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 74.

Labor Value Content Certification

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 37.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 74.

Steel Purchasing Certification

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 37.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 74.

Labor Value Content Averaging Election

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 25.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25.

Regional Value Content Averaging Election

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 25.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25.

Comments concerning the collection of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be posted to the docket of this rulemaking or to reginfo.gov. Comments are specifically welcome on (a) whether the proposed collection of information is necessary for the proper performance of the mission of the agencies, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information. Comments should be received on or before March 18, 2025.

Signing Authority

In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions. This regulation is being issued in accordance with DHS Directive 07010.3, Revision 03, which delegates to the Commissioner of CBP the authority to prescribe and approve/ sign regulations related to customs revenue functions.

Pete Flores, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign the document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects

19 CFR Part 10

Bonds, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Accounting, Claims, Exports, Freight, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 113

Common carriers, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 123

Canada, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 141

Reporting and recordkeeping requirements.

19 CFR Part 144

Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 163

Administrative practice and procedure, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

CFR Part 174

Administrative practice and procedure.

19 CFR Part 182

Administrative practice and procedure, Canada, Exports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

For the reasons stated above, U.S. Customs and Border Protection and the Department of the Treasury amend 19 CFR parts 10, 24, 113, 123, 141, 144, 163, 174, and 182 of title 19 of the Code of Federal Regulations as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general and specific authority citations for part 10 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 4513.

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Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

* * * * *

■ 2. In § 10.31, paragraphs (f) and (h) are revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) With the exceptions stated herein, a bond shall be given on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties and fees, which it is estimated would accrue (or such larger amount as the Center director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties and fees, determined at the time of entry. If appropriate, a carnet, under the provisions of part 114 of this chapter, may be filed in lieu of a bond on CBP Form 301 (containing the bond conditions set forth in § 113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS without formal entry, as provided for in §§ 10.36 and 10.36a, or the amount of the bond taken under any subheading of Chapter 98, Subchapter XIII, HTSUS, is less than $25, the bond shall be without surety or cash deposit, and the bond shall be modified to so indicate. In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a national of Canada or Mexico, or by a resident of Singapore, Chile, Morocco, Australia, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, Colombia, or Panama and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 11, 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, HTSUS, in the country of which the importer is a national or resident, as applicable. In the case of articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a national of Canada or Mexico, the bond shall be without surety or cash deposit in an amount equal to 110 percent of the estimated duties and fees determined at the time of entry, if the entered article is not originating, within the meaning of General Notes 11 and 12, HTSUS, in the country of which the importer is a national.

* * * * *

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall not be liquidated as the transaction does not involve liquidated duties. However, a TIB importer may be required to file an entry for consumption and pay duties, or pay liquidated damages under its bond for a failure to do so, in the case of merchandise imported under subheading 9813.00.05, HTSUS, and subsequently exported to Canada or Mexico (*see*§ 181.53 or 182.53 of this chapter).

■ 3. In § 10.36a, paragraph (a) is revised to read as follows:

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (with repair or alteration defined as restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good imported into the United States) may be entered on the operator's baggage declaration, in lieu of formal entry and examination, and may be passed under subheading 9813.00.05, Harmonized Tariff Schedule of the United States (HTSUS), at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered. The bond, prescribed by § 10.31(f), filed to support entry under this section, shall be without surety or cash deposit except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS, at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

* * * * *

■ 4. In § 10.41a, paragraphs (g)(1) and (3) are revised to read as follows:

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

* * * * *

(g)(1) Except as provided in paragraph (j) of this section, a container (as defined in Article 1 of the Customs Convention on Containers) that is designated as an instrument of international traffic is deemed to remain in international traffic provided that the container exits the United States within 365 days of the date on which it was admitted under this section. A container that is designated as an instrument of international traffic and admitted from Canada or Mexico is deemed to remain in international traffic beyond this 365-day time limit when CBP grants an extension, at the request of the person who filed the application for release under paragraph (a)(1) of this section, provided that the container exits the United States prior to the date of expiration of the extension granted. An exit from the United States in this context means a movement across the border of the United States into a foreign country where either:

(i) All merchandise is unladen from the container; or

(ii) Merchandise is laden aboard the container (if the container is empty).

* * * * *

(3) If the container does not exit the United States within 365 days of the date on which it is admitted under this section, or, by the date

on which an extension granted under paragraph (g)(1) of this section expires, such container shall be considered to have been removed from international traffic, and entry for consumption must be made within 10 business days after the end of the month in which the container is deemed removed from international traffic. When entry is required under this section, any containers considered removed from international traffic in the same month may be listed on one entry. Such entry may be made at any port of entry. Under 19 U.S.C. 1484(a)(1)(B), the importer of record is required, using reasonable care, to complete the entry by filing with CBP the declared value, classification and rate of duty applicable to the merchandise. The importer of record must use the value of the container as determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by the Trade Agreements Act of 1979 (TAA).

■ 5. In § 10.212, paragraph (l) is revised to read as follows:

§ 10.212 Definitions.

* * * * *

(l) *USMCA*. “USMCA” means the Agreement between the United States of America, the United Mexican States, and Canada, entered into force by the United States, Canada and Mexico on July 1, 2020.

* * * * *

§ 10.213 [Amended]

■ 6. In § 10.213(a)(8), remove the words “General Note 12(t)” and add, in their place, the words “General Note 11”.

§ 10.214 [Amended]

■ 7. Amend § 10.214 as follows:

■ a. In paragraph (b), remove the word “NAFTA” from the table and add, in its place, the word “USMCA”; and

■ b. In paragraph (c)(12), remove the word “NAFTA” and add, in its place, the word “USMCA”.

■ 8. In § 10.222, remove the definition for “NAFTA” and add, in alphabetical order, the definition for “USMCA”.

The addition reads as follows:

§ 10.222 Definitions.

* * * * *

USMCA. "USMCA" means the Agreement between the United States of America, the United Mexican States, and Canada, entered into force by the United States, Canada and Mexico on July 1, 2020.

* * * * *

§ 10.223 [Amended]

■ 9. In § 10.223(a)(7), remove the words "Annex 401 of the NAFTA" and add, in their place, the words "Annex 4–B of the USMCA".

§ 10.224 [Amended]

■ 10. In § 10.224(c)(12), remove the word "NAFTA" and add, in its place, the word "USMCA".

■ 11. Amend § 10.232 as follows:

■ a. Remove the definition for "NAFTA";

■ b. Amend the definition of "Preferential tariff treatment" by removing the words "Annex 302.2 of the NAFTA" and adding, in their place, the words "Annex 2–B of the USMCA"; and

■ c. Add, in alphabetical order, the definition for "USMCA".

The addition reads as follows:

§ 10.232 Definitions.

* * * * *

USMCA. "USMCA" means the Agreement between the United States of America, the United Mexican States, and Canada, entered into force by the United States, Canada and Mexico on July 1, 2020.

■ 12. In § 10.233, revise paragraphs(b) introductory text and (b)(1) to read as follows:

§ 10.233 Articles eligible for preferential treatment.

* * * * *

(b) *Application of the USMCA rules of origin.* In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 11 of the HTSUS, and part 182, appendix A of this chapter, will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the USMCA;

* * * * *

■ 13. In § 10.237, revise paragraph (b) to read as follows:

§ 10.237 Verification and justification of claim for preferential tariff treatment.

* * * * *

(b) *Importer requirements.* In order to make a claim for preferential tariff treatment under § 10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 11, HTSUS, and in part 182, appendix A of this chapter. A properly completed Certificate of Origin in the form prescribed in § 10.236(b) is a record that would serve this purpose;

* * * * *

■ 14. Revise § 10.301 to read as follows:

§ 10.301 Scope and applicability.

The provisions of §§ 10.302 through 10.311 of this part relate to the procedures for obtaining duty preferences on imported goods under the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851). The United States and Canada agreed to suspend operation of the Agreement with effect from January 1, 1994, to coincide with the entry into force of the North American Free Trade Agreement (*see* part 181 of this chapter) and to continue suspending operation of the Agreement with the entry into force of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) (*see* part 182 of this chapter) and, accordingly, the provisions of §§ 10.302 through 10.311 of this part apply only to goods imported from Canada that were entered for consumption, or withdrawn from warehouse for consumption, during the period January 1, 1989, through December 31, 1993. In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to Article 407 of the Agreement.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 15. The general and specific authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 4531; Sec. 892, Public Law 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Public Law 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Public Law 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

* * * * *

Section 24.36 also issued under 26 U.S.C. 5001(c)(4), 5041(c)(7), 5051(a)(6), 6423; Public Law 115–97; Public Law 116–260; 134 Stat. 3046.

■ 16. In § 24.23, paragraph (c)(3) is revised to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (2) of this section will not apply to goods originating within the meaning of General Note 11, HTSUS (*see also* 19 U.S.C. 4531), or to goods that qualify for preferential tariff treatment under § 182.82 of this chapter (*see also* Annex 6–A of the USMCA), that are entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. The ad valorem, surcharge, and specific fees will also not apply to goods originating in Canada or Mexico within the meaning of General Note 12, HTSUS, that are entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020 where such goods qualify to be marked, respectively, as goods of Canada or Mexico pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. For qualifying goods originating in Mexico, the exemption applies to goods entered or released (as defined in this section) after June 29, 1999. Where originating goods or goods that qualify for preferential tariff treatment under § 182.82 of this chapter are entered or released with other goods that

are not originating goods or are goods that do not qualify for preferential tariff treatment, the ad valorem, surcharge, and specific fees will apply only to those goods which are not originating goods or are goods that do not qualify for preferential tariff treatment.

* * * * *

■ 17. In § 24.36, paragraph (a)(1) introductory text is revised to read as follows:

§ 24.36 Refunds of excessive duties, taxes, etc.

(a) * * *

(1) Except as otherwise provided in paragraphs (a)(1)(i) through (iii) of this section, the refund shall include interest on the excess moneys deposited with Customs, and such interest shall accrue from the date the duties, taxes, fees or interest were deposited or, in a case in which a proper claim is filed under 19 U.S.C. 1520(d), from the date such claim is filed, to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

* * * * *

PART 113—CBP BONDS

■ 18. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. * * * * *

■ 19. In § 113.62, revise paragraph (a)(1) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(a) *Agreement to pay duties, taxes, and charges.* (1) If merchandise is imported and released from CBP custody or withdrawn from a CBP bonded warehouse into the commerce of, or for consumption in, the United States, or under § 181.53 or 182.53 of this chapter is withdrawn from a duty-deferral program for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the obligors (principal and surety, jointly and severally) agree to:

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

■ 20. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

■ 21. Revise § 123.0 to read as follows:

§ 123.0 Scope.

This part contains special regulations pertaining to CBP procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) are contained in part 182 of this chapter. The requirements for the United States Postal Service to transmit advance electronic information for inbound international mail shipments are set forth in § 145.74 of this chapter.

PART 141—ENTRY OF MERCHANDISE

■ 22. The general and specific authority citations for part 141 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

■ 23. In § 141.0a, paragraphs (a) and (f) are revised to read as follows:

§ 141.0a Definitions.

* * * * *

(a) *Entry.* 'Entry" means that documentation or data required by § 142.3 of this chapter to be filed with the appropriate CBP officer or submitted electronically to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system to secure the release of imported merchandise from CBP custody, or the act of filing that documentation. "Entry" also means that documentation or data required by § 181.53 or 182.53 of this chapter to be filed with CBP to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico.

* * * * *

(f) *Entered for consumption.*"Entered for consumption" means that an entry summary for consumption has been filed with CBP in proper form, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system, with estimated duties attached. "Entered for consumption" also means the necessary documentation has been filed with CBP to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico (*see* § 181.53 or 182.53 of this chapter).

* * * * *

■ 24. In § 141.68, paragraph (i) is revised to read as follows:

§ 141.68 Time of entry.

* * * * *

(i) *Exportation to Canada or Mexico of goods imported into the United States under a duty-deferral program defined in § 181.53 or 182.53 of this chapter.* When merchandise in a U.S. duty-deferral program is withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the date of entry is the date that the entry is required to be filed under § 181.53(a)(2)(iii) or 182.53(a)(2)(iii) of this chapter.

* * * * *

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

■ 25. The general authority citation for part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

■ 26. In § 144.38, paragraph (b) is revised to read as follows:

§ 144.38 Withdrawal for consumption.

* * * * *

(b) *Withdrawal for exportation to Canada or Mexico.* A withdrawal for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico is considered a withdrawal for consumption pursuant to § 181.53 or 182.53 of this chapter.

* * * * *

PART 163—RECORDKEEPING

■ 27. The general authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 28. Amend § 163.1(a)(2) as follows:

■ a. Redesignate paragraph (a)(2)(xviii) as paragraph (a)(2)(xix);

■ b. In newly redesignated paragraph (a)(2)(xix), remove the word “Customs” and add in its place the word “CBP”; and

■ c. Add a new paragraph (a)(2)(xviii). The addition reads as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(xviii) The maintenance of any documentation in support of a claim for preferential tariff treatment under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) pursuant to part 182 of this chapter, including the certification of origin.

* * * * *

§ 163.7 [Amended]

■ 29. Amend § 163.7(a)(2) by adding the phrase “to a USMCA country as defined in 19 U.S.C. 4502(10) (*see also* part 182 of this chapter) or” after the phrase “knowingly caused merchandise to be exported,”.

■ 30. Amend Appendix to part 163 as follows:

■ a. Revise the § 10.307 listing; and

■ b. Add a new listing under section IV in numerical order.

The revision and addition read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

† [§ 10.307 Documents, etc. required for entries under CFTA Certificate of origin of CF 353]

[† CFTA provisions are suspended while USMCA remains in effect. See part 182.]

* * * * *

§ 182.13 USMCA records that the importer may have in support of a USMCA claim for preferential tariff treatment, including the certification of origin.

* * * * *

PART 174—PROTESTS

■ 31. The general authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

■ 2. Amend § 174.12(a) as follows:

■ a. In paragraph (a)(5), remove the word “or” after the phrase “§ 181.11(a) of this chapter;”;

■ b. Redesignate paragraph (a)(6) as paragraph (a)(7);

■ c. Add a new paragraph (a)(6); and

■ d. In newly redesignated paragraph (a)(7), remove the number “5” and add in its place the number “6”.

The addition reads as follows:

§ 174.12 Filing of protests.

(a) * * *

(6) With respect to a determination of origin under part 182, subpart G, of this chapter, any exporter or producer of the merchandise subject to the determination of origin, if the exporter or producer completed and signed a certification of origin covering the merchandise as provided for in § 182.12 of this chapter; or

* * * * *

■ 33. Revise § 174.13(a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) * * *

(9) A declaration, to the best of the protestant’s knowledge, as to whether the entry is the subject of drawback, or if there is the ability for a party to make such entry the subject of drawback (*see* §§ 181.50, 182.50, 190.81, and 191.81 of this chapter).

* * * * *

■ 34. Revise § 174.15(b) to read as follows:

§ 174.15 Consolidation of protests filed by different parties.

* * * * *

(b) *NAFTA or USMCA transactions.* The following rules shall apply to a consolidation of multiple protests concerning a determination of origin under part 181, subpart G, or part 182, subpart G, of this chapter if one of the protests is filed by or on behalf of an exporter or producer described in § 174.12(a)(5) or (a)(6) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of § 181.121 of this chapter for NAFTA transactions or within the meaning of § 182.2 of this chapter for USMCA transactions. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the port director or Center director, before January 19, 2017, or the Center director on or after January 19, 2017, in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in § 181.121 of this chapter for NAFTA transactions or § 182.2 of this chapter for USMCA transactions.

■ 35. In § 174.22, amend paragraph (a) by adding a sentence to the end of the paragraph.

§ 174.22 Accelerated disposition of protest.

(a) * * * Accelerated disposition of a protest is not available for protests involving eligibility for USMCA preferential tariff treatment of a covered vehicle if the protest relates to the Department of Labor's analysis of the high-wage components of the labor value content (LVC) requirements as described under § 182.105(e) of this chapter.

* * * * *

§ 174.29 [Amended]

■ 36. In § 174.29, add the phrase "or (a)(6)" after the phrase "under § 174.12(a)(5)".

PART 182—UNITED STATES-MEXICO-CANADA AGREEMENT

■ 37. The general and specific authority citations for part 182 are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and General Note 11, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 4513, 4535; Section 182.1 also issued under 19 U.S.C. 4502; Subpart D also issued under 19 U.S.C. 1520(d); Subpart E also issued under 19 U.S.C. 4534; Subpart 182.61 also issued under 19 U.S.C. 4531, 4532; Subpart G also issued under 19 U.S.C. 4533; Subpart H also issued under 19 U.S.C. 4533; Subpart I also issued under 19 U.S.C. 4532.

Subpart A—General Provisions

■ 38. Amend § 182.0 by adding a sentence to the end of the paragraph to read as follows:

§ 182.0 Scope.

* * * Additional provisions applicable to the USMCA are contained in parts 10, 24, 163, 174, and 177 of this chapter.

■ 39. Amend § 182.1 by adding the definitions for "Alternative staging regime",

"Automotive good", "Corporate level", "Covered vehicle", "Customs offenses",

"DOL", "Heavy truck", "Light truck", "Passenger vehicle", "Tariff preference level",

"Textile or apparel good", "USMCA drawback", "Vehicle certifications", and "Wool apparel" in alphabetical order to read as follows:

§ 182.1 General definitions.

* * * * *

Alternative staging regime means the application of the requirements of section 19 of Appendix A to this part to the production of covered vehicles to allow producers of such vehicles to bring such production into compliance with the requirements of sections 13 through 18 of Appendix A to this part;

Automotive good means either a covered vehicle or a part, component, or material listed in Table A.1, A.2, B, C, D, E, F, or G of Appendix A to this part;

* * * * *

Corporate level. For an independent producer of a covered vehicle, its purchases or expenditures at the corporate level means the producer's total purchases or expenditures by value in one or more of the USMCA countries.

For a subsidiary company whose financial information is included in the parent company's consolidated financial statements, its purchases or expenditures at the corporate level means the parent company's total purchases or expenditures by value in one or more of the USMCA countries. For purposes of the high-wage technology expenditures credit for the labor value content (LVC) requirement, corporate level must include all USMCA countries with such expenditures.

Covered vehicle means a passenger vehicle, light truck, or heavy truck;

* * * * *

Customs offenses means any act committed for the purpose of, or having the effect of, avoiding the laws or regulations of the United States pertaining to the provisions of the USMCA governing importations or exportations of goods between, or transit of goods through, the territories of the United States, Canada, and Mexico, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, transshipment, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods;

* * * * *

DOL means the United States Department of Labor;

* * * * *

Heavy truck means a vehicle other than a vehicle that is solely or principally for off-road use of subheading 8701.20, 8704.22, 8704.23, 8704.32 or 8704.90, HTSUS, or a chassis fitted with an engine of heading 8706, HTSUS, as in effect on July 1, 2020, that is for use in such a vehicle;

* * * * *

Light truck means a vehicle of subheading 8704.21 or 8704.31, HTSUS, as in effect on July 1, 2020, except for a vehicle that is solely or principally for off-road use;

* * * * *

Passenger vehicle means a vehicle of subheading 8703.21 through 8703.90, HTSUS, as in effect on July 1, 2020, except for: A vehicle with a compression-ignition engine of subheadings 8703.31 through 8703.33, HTSUS, as in effect on July 1, 2020, or a vehicle of subheading 8703.90, HTSUS, as in effect on July 1, 2020, with both a compression-ignition engine and an electric motor for propulsion, a three- or four-wheeled motorcycle, an all-terrain vehicle, a motorhome or entertainer coach, or an ambulance, hearse or prison van;

* * * * *

Tariff preference level means a quantitative limit for certain non-originating textile or apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in § 182.82 of this part;

Textile or apparel good means a textile or apparel good classified in the HTSUS Chapters 54 through 63 or the following HTSUS headings or subheadings, as in effect on July 1, 2020: 4202.12, 4202.22, 4202.32, 4202.92, 5004 through 5007, 5104 through 5113, 5204 through 5212, 5303 through 5311, 6601, 7019, 9404.90, and 9619;

* * * * *

USMCA drawback means any drawback, waiver, or reduction of U.S. customs duty provided for in subpart E of this part;

* * * * *

Vehicle certifications means the labor value content (LVC) certification, steel purchasing certification, and aluminum purchasing certification for covered vehicles required by §§ 182.95, 182.96, and 182.97 of this part;

Wool apparel means apparel predominantly of wool, by weight; woven apparel predominantly of man-made fibers by weight, and containing 36 percent or more of wool, by weight; or knitted or crocheted apparel predominantly of man-made fibers by weight, and containing 23 percent or more of wool by weight;

* * * * *

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

■ 40. Revise § 182.42(c) to read as follows:

§ 182.42 Duties and fees not subject to drawback.

* * * * *

(c) Customs duties paid or owed under unused merchandise substitution drawback. There will be no payment of such drawback under 19 U.S.C. 1313(c)(2), 1313(j)(2), and 1313(p), when the basis for drawback is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), pursuant to § 190.173 of this chapter, on goods exported to Canada or Mexico per Article 2.5 of the USMCA.

■ 41. Revise § 182.43 to read as follows:

§ 182.43 Eligible goods subject to USMCA drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico;

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(c) Substituted by a good of the same kind and quality as defined in § 182.44(d) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

■ 42. Amend § 182.44 by adding new paragraphs (h) and (i) to read as follows:

§ 182.44 Calculation of drawback.

* * * * *

(h) *Substitution of finished petroleum derivatives under 19 U.S.C. 1313(p) for derivatives manufactured under 19 U.S.C. 1313(a) or (b).* Upon presentation of a USMCA drawback claim under 19 U.S.C. 1313(p) for manufactured or produced petroleum derivatives in accordance with § 190.174 of this chapter, the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico. The amount of drawback payable may not exceed the amount of drawback attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback. For purposes of substitution drawback under this subpart, the term "same kind and quality" is as used in 19 U.S.C. 1313(p) and part 190, subpart Q, of this chapter dealing with substitution of finished petroleum derivatives.

(i) *Goods sold at retail and returned under 19 U.S.C. 1313(c)(1)(C)(ii).* Upon presentation of the USMCA drawback claim under 19 U.S.C. 1313(c)(1)(C)(ii) for goods ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer, the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico. The amount of drawback payable may not exceed 99 percent of the duty paid on such imported merchandise into the United States. Substitution pursuant to 19 U.S.C. 1313(c)(2) is not permitted (s*ee*§ 182.42(c) of this subpart).

■ 43. In § 182.45, revise paragraph (c) to read as follows:

§ 182.45 Goods eligible for full drawback.

* * * * *

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c)(1)(C)(i).* An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c)(1)(C)(i) without regard to the limitation on drawback set forth in § 182.44 of this subpart. Such a good must be exported or destroyed within the statutory five-year time period and in compliance with the requirements set forth in part 190, subpart D, of this chapter, as applicable.

* * * * *

■ 44. Revise § 182.47 to read as follows:

§ 182.47 Completion of claim for drawback.

(a) *General.* A claim for drawback will be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback must be in accordance with the provisions of part 190 of this chapter, as appropriate; however, a drawback claim subject to the provisions of this subpart must be filed separately from any part 190 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the periods specified in § 182.46 of this subpart will be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart must consist of the filing of the appropriate completed drawback entry, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents. Each drawback entry filed under this subpart must be filed using the indicator "USMCA Drawback".

(2) *Specific claims.* The following documentation must be submitted to CBP in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following must be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A manufacturing drawback ruling number;

(B) CBP Form 7501, or its electronic equivalent, or the import entry number;

(C) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico. Satisfactory evidence must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred must be submitted in order for the claim to be considered complete; and

(E) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's certification of origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify CBP if the party subsequently provides such an exporter's certification of origin to any person.

(ii) *Unused merchandise drawback claim under 19 U.S.C. 1313(j)(1).* The following must be submitted in connection with a drawback claim covering a good eligible for unused merchandise drawback under 19 U.S.C. 1313(j)(1):

(A) The foreign entry number and date of entry, the HTSUS classification for the foreign entry, the amount of duties paid for the foreign entry and the applicable exchange rate. For goods in the same condition, a certification from the claimant that provides as follows: "Same condition—The undersigned certifies that the merchandise herein described is in the same condition as when it was imported under the import entry(s) and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.";

(B) Information sufficient to trace the movement of the imported goods after importation;

(C) In-bond application submitted pursuant to part 18 of this chapter, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(D) CBP must be notified at least five business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* § 190.35 of this chapter);

(E) Acceptable documentary evidence of exportation to Canada or Mexico may include originals or copies of any of the following documents that are issued by the exporting carrier: bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, and cargo manifest. Supporting documentary evidence must establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(F) If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred is required in order for the claim to be considered complete; and

(G) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following must be submitted in the case of goods not conforming to sample or specifications, or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c)(1)(C)(i):

(A) CBP Form 7501, or its electronic equivalent, to establish the fact of importation, the receipt of the imported goods, and the identity of the party to whom drawback is payable (*see* § 182.48(c) of this subpart);

(B) Documentary evidence to support the claim that the goods did not conform to sample or specifications, or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(C) CBP Form 7512, or its electronic equivalent, if applicable;

(D) Notification of intent to export or waiver of prior notice. CBP must be notified at least five business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* § 190.42 of this chapter); and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(E) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph must be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of part 190, subpart N, of this chapter.

(vi) *Substitution of finished petroleum derivatives under 19 U.S.C. 1313(p) for derivatives manufactured under 19 U.S.C. 1313(a) or (b).* The provisions of paragraph (b)(2)(i) of this section relating to manufacturing drawback will apply to claims for drawback on manufactured or produced petroleum derivatives, in accordance with § 190.174 of this chapter, filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of part 190, subpart Q, of this chapter.

(vii) *Goods sold at retail and returned under 19 U.S.C. 1313(c)(1)(C)(ii).* The following must be submitted in the case of goods ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer and subject to a drawback claim under 19 U.S.C. 1313(c)(1)(C)(ii):

(A) CBP Form 7501, or its electronic equivalent, to establish the fact of importation, the receipt of the imported goods, and the identity of the party to whom drawback is payable (*see* § 182.48(c) of this subpart);

(B) Documentary evidence to support the claim that the goods were ultimately sold at retail by the importer or the person who received the merchandise from the importer, and were returned to and accepted by the importer or the person who received the merchandise from the importer;

(C) CBP Form 7512, or its electronic equivalent, if applicable;

(D) Notification of intent to export or waiver of prior notice. CBP must be notified at least five business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* § 190.42 of this chapter); and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(E) of this section.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico must consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, presented with either the K–84 Statement or the Detailed Coding Statement. A

Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the “pedimento”);

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, with respect to the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

■ 45. Add § 182.48 to subpart E to read as follows:

§ 182.48 Person entitled to receive drawback.

(a) General. The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, will be considered the exporter and entitled to drawback.

(b) *Manufacturing drawback.* The person named as the exporter is entitled to claim manufacturing drawback, unless the manufacturer or producer reserves the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, will receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(c) *Nonconforming or improperly shipped goods drawback under 19 U.S.C. 1313(c)(1)(C)(i) and drawback on goods sold at retail and returned under 19 U.S.C. 1313(c)(1)(C)(ii).* The person named as the exporter is entitled to claim rejected merchandise drawback; if the claimant was not the importer of the merchandise or its agent, the claimant must submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods, that no other claim for drawback was made on the goods (*see* § 190.42(b) of this chapter).

(d) *Unused merchandise drawback under 19 U.S.C. 1313(j)(1).* The person named as the exporter is entitled to claim drawback under 19 U.S.C. 1313(j)(1) unless the exporter has in writing waived its right to claim drawback (*see* § 190.33 of this chapter).

■ 46. Add § 182.50(b) to read as follows:

§ 182.50 Liquidation and payment of drawback claims.

* * * * *

(b) *Time for liquidation.* A drawback claim will not be liquidated until either a written waiver of the right to protest under 19 U.S.C. 1514 is filed with CBP or the liquidation of the import entry has become final under U.S. law. In addition, except in the case of goods covered by § 182.45 of this subpart, a drawback claim must not be liquidated for a period of three years after the date of entry of the goods in Canada or Mexico. A drawback claim may be adjusted pursuant to 19 U.S.C. 4534(e)(1) even after liquidation of the U.S. import entry has become final.

* * * * *

■ 47. Add § 182.53 to subpart E to read as follows:

§ 182.53 Collection and waiver or reduction of duty under duty-deferral programs.

(a) *General*—(1) *Definitions.* The following definitions apply for purposes of this section:

(i) *Date of exportation. Date of exportation* means the date of importation into Canada or Mexico as reflected on the applicable Canadian or Mexican entry document (*see* § 182.47(c)(1) and (2) of this subpart).

(ii) *Duty-deferral program.* A *duty-deferral program* means any measure which postpones duty payment upon arrival of a good in the United States until withdrawn or removed for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program. Such measures govern manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, and those temporary importations under bond that are specified in paragraph (b)(5) of this section.

(2) *Treatment as entered or withdrawn for consumption*—(i) *General*.

(A) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico, and provided that the good is a "good subject to USMCA drawback" within the meaning of 19 U.S.C. 4534 and is not described in § 182.45 of this subpart, the documentation required to be filed under this section in connection with the exportation of the good will, for purposes of this chapter, constitute an USMCA entry or withdrawal for consumption and the exported good must be subject to duty which will be assessed in accordance with paragraph (b) of this section.

(B) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico, and provided that the good is a "good subject to USCMA drawback" within the meaning of 19 U.S.C. 4534 and is not described in § 182.45 of this subpart, the documentation required to be filed under this section in connection with the withdrawal of the good from the U.S. duty-deferral program will, for purposes of this chapter, constitute a USMCA entry or withdrawal for consumption and the withdrawn good must be subject to duty which will be assessed in accordance with paragraph (b) of this section.

(C) Any assessment of duty under this section must include the duties and fees referred to in § 182.42(a) and (b) of this subpart and the fees provided for in § 24.23 of this chapter; these inclusions will not be subject to refund, waiver, reduction or drawback.

(ii) *Bond requirements.* The provisions of § 142.4 of this chapter will apply to each withdrawal and exportation transaction described in paragraph (a)(2) of this section. However, in applying the provisions of § 142.4 of this chapter in the context of this section, any reference to release from CBP custody in § 142.4 of this chapter will be taken to mean exportation to Canada or Mexico.

(iii) *Documentation filing and duty payment procedures*—(A) *Persons required to file.* In the circumstances described in paragraph (a)(2) of this section, the documentation described in paragraph (a)(2)(iii)(B) of this section must be filed by one of the following persons:

(*1*) In the case of a withdrawal of the goods from a warehouse, the person who has the right to withdraw the goods in accordance with § 144.31 of this chapter;

(*2*) In the case of a temporary importation under bond (TIB) specified in paragraph (b)(5) of this section, the TIB importer whether or not it sells the goods for export to Canada or Mexico unless § 10.31(h) of this chapter applies; or

(*3*) In the case of a withdrawal from a foreign trade zone, the person who has the right to make entry (see § 146.62 of this chapter). However, if a zone operator is not the person with the right to make entry of the good, the zone operator will be responsible for the payment of any duty due in the event the zone operator permits such other person to remove the goods from the zone (§§ 146.67 and 146.68 of this chapter) and such other person fails to comply with the requirements of this provision.

(B) *Documentation required to be filed and required filing date.* The person required to file must file CBP Form 7501, or its electronic equivalent, no later than 10 working days after the date of exportation to Canada or Mexico or 10 working days after the goods' being entered into a duty-deferral program in Canada or Mexico. Except where the context otherwise requires and except as otherwise specifically provided in this section, the procedures for completing and filing CBP Form 7501, or its electronic equivalent, in connection with the entry of merchandise under this chapter will apply for purposes of this paragraph. For purposes of completing CBP Form 7501, or its electronic equivalent, under this paragraph, any reference to the entry date will be taken to refer to the date of exportation of the good or the date the good is entered into a duty-deferral program in Canada or Mexico. The CBP Form 7501, or its electronic equivalent, required under this paragraph, may be transmitted electronically. *See* §§ 141.62, 141.63, and 144.38 (bonded warehouse) of this chapter.

(C) *Duty payment.* The duty estimated to be due under paragraph (b) of this section must be deposited with CBP 60 calendar days after the date of exportation of the good. If a good is entered into a duty-deferral program in Canada or Mexico, the duty estimated to be due under paragraph (b) of this section, but without any waiver or reduction provided for in that paragraph, must be deposited with CBP 60 calendar days after the date the good is entered into such duty-deferral program. Nothing precludes the deposit of such estimated duty at the time of filing the CBP Form 7501, or its electronic equivalent, under paragraph (a)(2)(iii)(B) of this section or at any other time within the 60-day period prescribed in this paragraph. However, any interest calculation will run from the date the duties are required to be deposited.

(3) *Waiver or reduction of duties—(i) General.* Except in the case of duties and fees referred to in § 182.42(a) and (b) of this subpart and fees provided for in § 24.23 of this chapter, CBP may waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who is required to file the CBP Form 7501, or its electronic equivalent (*see* paragraph (a)(2)(iii)(A) of this section) in accordance with paragraph (b) of this section, provided that a claim for waiver or reduction of the duties is filed with CBP within the appropriate 60-day time frame. The claim must be based on evidence of exportation or entry into a Canadian or Mexican duty-deferral program and

satisfactory evidence of duties paid in Canada or Mexico (*see* § 182.47(c) of this subpart).

(ii) *Filing of claim and payment of reduced duties.* A claim for a waiver or reduction of duties under paragraph (a)(3)(i) of this section must be made on CBP Form 7501, or its electronic equivalent, which must set forth, in addition to the information required under paragraph (a)(2)(iii)(B) of this section, a description of the goods exported to Canada or Mexico, and the Canadian or Mexican import entry number, date of importation, tariff classification number, rate of duty and amount of duty paid. If a claim for reduction of duties is filed under this paragraph, the reduced duties must be deposited with CBP when the claim is filed.

(iii) *Drawback on goods entered into a duty-deferral program in Canada or Mexico.* After goods within a duty-deferral program in the United States, which were exported from the United States and entered into a duty-deferral program in Canada or Mexico, are then withdrawn from that Canadian or Mexican duty-deferral program either for entry into Canada or Mexico or for export to a non-USMCA country, the person who filed the CBP Form 7501, or its electronic equivalent and the information required in paragraph (a)(2)(iii)(B) of this section, may file a claim for drawback if the goods are withdrawn within five years from the date of the original importation of the good into the United States. If the goods are entered for consumption in Canada or Mexico, drawback will be calculated in accordance with § 182.44 of this subpart.

(4) *Liquidation of entry*—(i) *If no claim is filed.* If no claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, CBP will determine the final duties due under paragraph (a)(2)(i) of this section and will post a notice of liquidation of the entry filed under this section in accordance with § 159.9 of this chapter. Where no claim was filed in accordance with this section and CBP fails to liquidate, or extend liquidation of, the entry filed under this section within one year from the date of entry, upon the date of expiration of that one-year period the entry will be deemed liquidated by operation of law in the amount asserted by the exporter on the CBP Form 7501, or its electronic equivalent, filed under paragraph (a)(2)(iii)(A) of this section. A protest under 19 U.S.C. 1514 and part 174 of this chapter must be filed within 180 days from the date of liquidation under this section.

(ii) *If a claim is filed.* If a claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, an extension of liquidation of the entry filed under this section will take effect for a period not to exceed three years from the date the entry was filed. Before the close of the extension period, CBP will liquidate the entry filed under this section and will post a bulletin of liquidation in accordance with § 159.9 of this chapter. If CBP fails to liquidate the entry filed under this section within four years from the date of the entry, upon the date of expiration of that four-year period the entry will be deemed liquidated by operation of law in the amount asserted by the exporter on the CBP Form 7501, or its electronic equivalent, filed under paragraph (a)(3)(ii) of this section. A protest under 19 U.S.C. 1514 and part 174 of this chapter must be filed within 180 days from the date of liquidation under this section.

(b) *Assessment and waiver or reduction of duty*—(1) *Manipulation in warehouse.* Where a good subject to USMCA drawback under this subpart is withdrawn from a bonded warehouse (*see* 19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty will be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty must be paid no later than 60 calendar days after the date of exportation or of entry into the duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(2) *Bonded manufacturing warehouse.* Where a good is manufactured in a bonded warehouse (*see* 19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty will be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty must be paid no later than 60 calendar days after either the date of exportation or of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

(3) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (*see* 19 U.S.C. 1312), duty will be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after either the date of

exportation of the treated materials to Canada or Mexico or the date of entry of the treated materials into a duty-deferral program of Canada or Mexico, either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon filing of a proper claim under paragraph (a)(3) of this section, the duty on the imported materials will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

(4) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (*see* 19 U.S.C. 81c(a)) and then withdrawn from the zone for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program, the duty assessed, as calculated under paragraph (b)(4)(i) or (ii) of this section, must be paid no later than 60 calendar days after either the date of exportation of the good to Canada or Mexico or the date of entry of the good into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(i) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico, or its entry into a duty-deferral program of Canada or Mexico.

(ii) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is elected.

(5) *Temporary importation under bond.* Except in the case of a good imported from Canada or Mexico for repair or alteration, where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, HTSUS) and is subsequently exported to Canada or Mexico, duty will be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty must be paid no later than 60 calendar days after either the date of exportation or the date of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not

exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(c) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person must maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico or entry into a duty-deferral program of Canada or Mexico, and if a person files a claim under this section for a waiver or reduction of duty on goods exported to Canada or Mexico or entered into a Canadian or Mexican duty-deferral program, that person must maintain evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the good (*see* § 182.47(c) of this subpart). Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(d) *Failure to file proper claim.* If the person identified in paragraph (a)(2)(iii)(A) of this section fails to file a proper claim within the 60-day period specified in this section, that person, or the FTZ operator, pursuant to paragraph (a)(2)(iii)(A)(3) of this section, will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(e) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 5.11 of the USMCA (post-importation claim) or under any other circumstance after duties have been waived or reduced under this section, CBP may reliquidate the entry filed under this section pursuant to 19 U.S.C. 4534(e) even after liquidation of the entry has become final.

■ 48. Add § 182.55 to subpart E to read as follows:

§ 182.55 Goods exported from duty-deferral programs that are not a “good subject to USMCA drawback” within the meaning of 19 U.S.C. 4534.

(a) An importer, or its agent, claiming a good is not a “good subject to USMCA drawback” within the meaning of 19 U.S.C. 4534 must notify CBP at:

(1) The time of importation and admission into the duty-deferral program; or

(2) The time of filing the documentation required under § 182.53(a)(2)(iii)(B) of this subpart.

(b) A person must maintain records supporting a claim that a good is not a "good subject to USMCA drawback" within the meaning of 19 U.S.C. 4534. The records must be made available for examination and inspection by a CBP official in the same manner as provided in part 163 of this chapter in the case of U.S. importer records.

Subpart G—Origin Verifications and Determinations

■ 49. In § 182.71, add two sentences to the end of the section

§ 182.71 Applicability.

* * * Additional verification procedures apply to automotive goods and are set forth in subpart I of this part. For textile and apparel goods, CBP may choose to conduct a verification pursuant to the verification means and procedures contained in this subpart or may alternatively choose to conduct a verification pursuant to a site visit as described in § 182.83 of this part.

■ 50. Amend § 182.75 as follows:

■ a. Revise paragraph (c)(2); and

■ b. In paragraph (c)(4), remove the phrase "unless CBP determines that there is a pattern of conduct of false or unsupported representations pursuant to § 182.76,".

The revision reads as follows:

§ 182.75 Determinations of origin.

* * * * *

(c) * * *

(2) *Denial of preferential tariff treatment.* CBP may deny the claim for preferential tariff treatment if:

(i) The certification of origin is not submitted to CBP upon request as required pursuant to § 182.12(a) of this part, or, for textile or apparel goods claiming USMCA preferential tariff treatment under a tariff preference level (TPL), the certificate of eligibility is not submitted to CBP upon request as required pursuant to § 182.82(d) of this part;

(ii) The claim or certification of origin is invalid or based on inaccurate information and is not corrected within the required time period pursuant to § 182.11(c) of this part;

(iii) CBP determines that the importer, exporter, or producer failed to provide sufficient information to substantiate the claim;

(iv) CBP determines that the good does not qualify for preferential tariff treatment, including failing to meet the rules of origin requirements in General Note 11, HTSUS, and Appendix A to this part, or the TPL requirements in § 182.82 of this part;

(v) The importer, exporter, or producer fails to respond to the request for information pursuant to § 182.73(f)(1) subject to the conditions in § 182.75(c)(1) of this subpart;

(vi) The importer, exporter, or producer fails to respond to the questionnaire pursuant to § 182.73(f)(1) of this subpart;

(vii) The exporter or producer fails to consent to a verification visit pursuant to § 182.74 of this subpart;

(viii) The importer, exporter, or producer fails to maintain records demonstrating that the good qualifies for preferential tariff treatment as required pursuant to this part;

(ix) The importer, exporter, or producer denies access, as requested by CBP, to records or documentation that are in its possession or required to be maintained pursuant to this part;

(x) The exporter or producer denies access to records or documentation that are in its possession or required to be maintained, or to facilities during a verification visit as required pursuant to this part;

(xi) CBP finds a pattern of conduct pursuant to § 182.76 of this subpart or, for textile and apparel goods, pursuant to § 182.83(g) of this part;

(xii) CBP determines, pursuant to a site visit for textiles or apparel goods conducted under § 182.83 of this part, that any of the reasons for denial set forth in § 182.83(e) of this part applies;

(xiii) CBP determines, for automotive goods, that any of the reasons for denial set forth in § 182.107 of this part applies; or

(xiv) CBP determines that any other reason to deny a claim for preferential tariff treatment as set forth in this part applies.

* * * * *

Subpart H—Textile and Apparel Goods

■ 51. Revise § 182.81 to read as follows:

§ 182.81 Applicability.

This subpart applies only to textile or apparel goods. This subpart contains the provisions for textile or apparel goods that are claiming USMCA preferential tariff treatment under a tariff preference level (TPL) and the provisions related to site visits. With the exception of §§ 182.11, 182.12, 182.14, 182.16, subpart D, and the rules of origin set forth in Appendix A of this part, the relevant requirements and procedures set forth in this part apply to TPLs. For textile or apparel goods, including TPLs, CBP has the discretion to conduct a verification pursuant to the general verification means and procedures contained in subpart G of this part or to choose to conduct a verification pursuant to a site visit as set forth in this subpart. Unless otherwise specified in this subpart, the requirements and procedures set forth in subpart G of this part do not apply to a site visit conducted pursuant to this subpart.

■ 52. Revise § 182.82 to read as follows:

§ 182.82 Claim for preferential tariff treatment under tariff preference level.

(a) *Basis of claim.* Textile or apparel goods described in paragraph (b) of this section that do not qualify as originating goods under the rules of origin in General Note 11, HTSUS, and Appendix A of this part may qualify for preferential tariff treatment under the USMCA under an applicable tariff preference level (TPL). An importer, who cannot make a claim pursuant to § 182.11(b) for these non-originating goods, may make a claim for USMCA preferential tariff treatment under a TPL, including an exemption from the merchandise processing fee, for such textile or apparel goods provided that:

(1) The textile or apparel goods are eligible for a TPL claim under paragraph (b) of this section;

(2) The annual quantitative limit has not been reached for the subject TPL as indicated in U.S. Note 11, Subchapter XXIII, Chapter 98, HTSUS, and paragraph (b) of this section; and

(3) The claim is based on a certificate of eligibility, as specified in paragraph (d) of this section.

(b) *Goods eligible for TPL claims.* The following goods are eligible for a TPL claim made under paragraph (c) of this section:

(1) *Cotton or man-made fiber apparel goods of a USMCA country.* Cotton or man-made fiber apparel goods described in U.S. Notes 11(a)(i) and (b)(i), Subchapter XXIII, Chapter 98, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of a USMCA country, and that meet the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Notes 11(a) and 11(b), Subchapter XXIII, Chapter 98, HTSUS;

(2) *Wool apparel goods of a USMCA country.* Wool apparel goods described in U.S. Note 11, Subchapter XXIII, Chapter 98, HTSUS, and that meet the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are

originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 11(a)(i)(B) and (b)(i)(C), Subchapter XXIII, Chapter 98, HTSUS;

(3) *Cotton or man-made fiber fabrics and made-up goods.* Fabrics and made-up goods described in U.S. Note 11(a)(ii) and (b)(ii), Subchapter XXIII, Chapter 98, HTSUS, made from cotton or man-made fiber, provided that the goods meet the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 11(a)(ii) and (b)(ii), Subchapter XXIII, Chapter 98, HTSUS; and

(4) *Cotton or man-made fiber spun yarn.* Yarn described in U.S. Note 11(a)(iii) and (b)(iii), Subchapter XXIII, Chapter 98, HTSUS, made from cotton or man-made fiber, provided that the yarn meets the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 11(a)(iii) and (b)(iii), Subchapter XXIII, Chapter 98, HTSUS.

(c) *Making a TPL claim.* A claim for preferential tariff treatment under a TPL is made by including on the entry summary, or equivalent documentation, or by the method specified for equivalent reporting via an authorized electronic data interchange system, the applicable subheading in Chapter 98, HTSUS, the applicable subheading under which each non-originating textile or apparel good is classified with the letter "S+" as a prefix to the subheadings of the HTSUS, and the certificate of eligibility number. The applicable subheadings in Chapter 98, HTSUS, are:

(1) For goods described in paragraph (b)(1) of this section, subheadings 9823.52.01 and 9823.53.01;

(2) For goods described in paragraph (b)(2) of this section, subheadings 9823.52.02, 9823.52.03, 9823.53.02;

(3) For goods described in paragraph (b)(3) of this section, subheadings 9823.52.04, 9823.52.05, 9823.52.06, 9823.53.03, 9823.53.04, and 9823.53.05; and

(4) For goods described in paragraph (b)(4) of this section, subheadings 9823.52.07, 9823.52.08, and 9823.53.06.

(d) *Certificate of eligibility.* An importer who makes a claim for preferential tariff treatment pursuant to paragraph (c) of this section must submit, at the request of CBP, a certificate of eligibility issued by an authorized official of the government of Mexico or Canada. The certificate of eligibility must contain information demonstrating that a good is eligible for a TPL claim as set forth in paragraph (b) of this section and to track allocation and use of a TPL. The certificate of eligibility must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

(e) *Post-importation claims.* (1) *Right to make a post-importation claim.* Where a textile or apparel good would have qualified for preferential tariff treatment under paragraph (a) of this section when it was imported into the United States but no claim for preferential tariff treatment was made under paragraph (c) of this section, the importer of that good may file a claim for a refund of any excess customs duties at any time within one year after the date of importation of the good. As this post-importation claim is not filed in accordance with 19 U.S.C. 1520(d) or subpart D of this part, the claim must be filed in accordance with the procedures set forth in paragraph (e)(2) of this section.

(2) *Filing procedures.* Post-importation claims under a TPL must be filed with the certificate of eligibility for the year the entry summary, or equivalent documentation, is accepted by CBP. Post-importation claims will not be granted if the quantitative limits for the subject TPL, as provided for in paragraph (b) of this section, are already met.

(f) *Denial of preferential tariff treatment.* If the importer fails to comply with the requirements under this section, including the submission of a certificate of eligibility upon request in accordance with paragraph (d) of this section, or if the textile or apparel good is not eligible to make a TPL claim under paragraph (b) of this section, CBP may deny preferential tariff treatment to the textile or apparel good.

(g) *Verifications.* CBP will conduct a verification of a textile or apparel good claiming USMCA preferential tariff treatment under a TPL pursuant to the means and procedures in either subpart G of this part or § 182.83 of this subpart.

■ 53. Add § 182.83 to subpart H to read as follows:

§ 182.83 Verifications of textile and apparel goods.

(a) *Verification of textile and apparel goods.* For textile and apparel goods, CBP has two alternative means of conducting a verification. CBP may conduct a verification for purposes of determining whether a textile and apparel good qualifies for preferential tariff treatment using any of the means described in § 182.72(a) of this part. Alternatively, as described in this section, CBP may conduct a site visit to the premises of the exporter or producer of textile or apparel goods in Mexico or Canada for the purpose of determining:

(1) That a textile or apparel good qualifies for preferential tariff treatment; or

(2) That customs offenses with regard to a textile or apparel good are occurring or have occurred.

(b) *Verification of a material during a site visit.* When conducting a verification of a textile or apparel good imported into the United States, CBP may conduct a verification of the material that is used in the production of that good. A verification of a material producer may be conducted pursuant to the site visit procedures set forth in this section. With the exception of § 182.75, the provisions in this section also apply to the verification of a material and references to the term "producer" apply to a producer of a textile or apparel good or to a material producer.

(c) *Site visit procedures.* (1) *Consent required.* Prior to conducting a site visit in Canada or Mexico pursuant to this section, CBP must obtain the consent of the exporter, producer, or a person having capacity to consent on behalf of the exporter or producer, either prior to the site visit or at the time of the site visit, to access the relevant records or facilities. CBP must, at the time of the request for consent, inform the exporter, producer, or person having the capacity to consent to a site visit of:

(i) The legal authority for the visit;

(ii) The specific purpose of the visit; and

(iii) The names and titles of the U.S. officials performing the visit.

(2) *Failure to receive CBP on initial date.* (i) If the exporter, producer, or a person having the capacity to consent on behalf of the exporter or producer is not able to receive CBP to carry out the site visit, the site visit will be conducted on the following business day unless:

(A) CBP agrees otherwise; or

(B) The exporter, producer, or person having the capacity to consent on behalf of the exporter or producer substantiates a valid reason acceptable to CBP for why the site visit cannot occur on the following business day.

(ii) If the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer, does not have a valid reason acceptable to CBP for why the site visit cannot take place on the following business day, CBP will consider any reasonable alternative proposed dates, taking into account the availability of relevant employees or facilities of the exporter or producer to be visited. After such consideration, CBP may deem consent for the site visit or access to the records or facilities to be denied.

(3) *Availability of records and facilities.* During a site visit, CBP may request access to:

(i) Records and facilities relevant to the claim for preferential tariff treatment; or

(ii) Records and facilities relevant to the customs offenses being verified.

(d) *Right to request report of the site visit.* The exporter or producer may request CBP's written report of the results of the site visit. The exporter or producer must submit this request in writing to CBP. CBP will provide the exporter or producer the portions of the report that pertain to that exporter or producer, including any findings, subject to the confidentiality provisions in § 182.2 of this part.

(e) *Denial of preferential tariff treatment.* CBP may deny preferential tariff treatment to any textile or apparel good imported or produced by the person that is the subject of the verification if CBP determines any of the following:

(1) CBP determines, pursuant to a site visit conducted under this section, that it has not received sufficient information to determine that the textile or apparel good qualifies for preferential tariff treatment;

(2) CBP determines that the textile or apparel good does not qualify for preferential tariff treatment, including failing to meet the rules of origin requirements in General Note 11, HTSUS, and Appendix A to this part, or the TPL requirements in § 182.82 of this subpart;

(3) CBP is unable to determine, pursuant to a site visit conducted under paragraph (a)(2) of this section, that the exporter or producer is complying with applicable customs measures affecting trade in textile or apparel goods;

(4) CBP is unable to conduct a site visit because access to or consent for the site visit is denied by the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer;

(5) The exporter, producer, or a person having the capacity to consent on behalf of the exporter or producer prevents CBP from completing the site visit on the initial date of the site visit and the exporter or producer does not provide an acceptable alternative date for the site visit;

(6) The exporter, producer, or person having the capacity to consent on behalf of the exporter or producer fails to provide CBP with access to relevant documents or facilities during a site visit as required under § 182.83(c)(3) of this section; or

(7) CBP determines that any other reason to deny a claim for preferential tariff treatment as set forth in § 182.75(c)(2) of this part applies.

(f) *Intent to deny and determination of origin.* After CBP conducts a site visit under this section, CBP will issue a determination of origin pursuant to the procedures set forth in § 182.75, with the exception of § 182.75(c)(1). If CBP conducts a site visit under this section and, as a result, intends to deny preferential tariff treatment to a textile or apparel good, it must, prior to issuing a determination of origin, issue an intent to deny pursuant to § 182.75(c)(3).

(g) *Pattern of conduct for textile or apparel goods.* Where the verification of identical textile or apparel goods by CBP indicates a pattern of conduct by an exporter or producer of false or unsupported representations that a textile or apparel good imported into the territory of the United States qualifies for preferential tariff treatment, CBP may withhold preferential tariff treatment to identical textile or apparel goods imported, exported, or produced by that person until it is demonstrated to CBP that those identical textile or apparel goods qualify for preferential tariff treatment.

Subpart I—Automotive Goods

■ 54. Add § 182.91 to read as follows:

§ 182.91 Applicability.

This subpart contains the additional requirements and procedures applicable only to automotive goods, including covered vehicles claiming USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part. Covered vehicles claiming USMCA preferential tariff treatment must also meet the requirements and follow the procedures contained in this part, including the requirements set forth in Appendix A of this part. This subpart contains the labor value content (LVC), steel purchasing, and aluminum purchasing requirements for covered vehicles (passenger vehicles, light trucks, and heavy trucks), the LVC, steel purchasing, and aluminum purchasing certification requirements and procedures, the motor vehicle averaging election requirements and procedures, the recordkeeping requirements, the verification procedures applicable to automotive goods, and additional reasons that CBP may deny preferential tariff treatment to covered vehicles.

■ 55. Add § 182.92 to read as follows:

§ 182.92 Claim for preferential tariff treatment for covered vehicles.

(a) *General.* An importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for a covered vehicle only if the requirements set forth in this part are met, including the certification of origin requirement in § 182.12 of this part, the LVC requirement in § 182.93 of this subpart, and the steel purchasing and aluminum purchasing requirements in § 182.94 of this subpart, and if the vehicle producer has complied with the LVC, steel purchasing, and aluminum purchasing certification requirements under §§ 182.95, 182.96, and 182.97 of this subpart.

(b) *Requirement to include vehicle certification unique identifier.* An importer making a claim for USMCA preferential tariff treatment for a covered vehicle under § 182.11(b) of this part must include on the entry summary or equivalent documentation, or by the method specified for equivalent reporting via an authorized data interchange system, the unique identifier assigned by CBP for each of the LVC, steel purchasing, and aluminum purchasing certifications that forms the basis for the covered vehicle's eligibility for preferential tariff treatment. An importer making a claim for USMCA preferential tariff treatment for a covered vehicle under § 182.32 of this part must include, in the post-importation claim, the unique identifier assigned by CBP for each of the LVC, steel purchasing, or aluminum purchasing certifications that forms the basis for the covered vehicle's eligibility for preferential tariff treatment.

■ 56. Add § 182.93 to read as follows:

§ 182.93 Labor value content (LVC) requirement.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets the LVC requirement, as set forth in General Note 11(k)(vi), HTSUS, and section 18 of Appendix A to this part or, if the producer is subject to the alternative staging regime, General Note 11(k)(viii), HTSUS, and section 19 of Appendix A to this part.

(b) *Administering the LVC component.* The Department of Labor (DOL) is responsible for implementing and administering the high-wage components of the LVC requirement. The DOL regulations that set forth information concerning the high-wage components of the LVC requirement and the applicable procedures are in 29 CFR part 810. CBP is responsible for determining whether a covered vehicle meets the LVC requirement generally, setting procedures for submitting the LVC certification, verifying the LVC requirement in conjunction with DOL, and determining whether a covered vehicle qualifies for USMCA preferential tariff treatment. CBP and DOL may exchange information as necessary to properly administer the LVC requirement, subject to the confidentiality provisions in § 182.2 of this part and the DOL regulations in 29 CFR part 810.

(c) *LVC calculation.* For the purpose of determining whether a covered vehicle meets the LVC requirement, the producer of the covered vehicle must calculate the LVC requirement pursuant to

General Note 11(k)(vi), HTSUS, and section 18 of Appendix A to this part and the requirements for the high-wage components of the LVC requirement set forth in the DOL regulations at 29 CFR part 810.

(d) *Calculation periods.* The producer of a covered vehicle may base the LVC calculation over the calculation periods set forth in either this paragraph or paragraph (e) of this section. The following calculation periods are provided for in section 18(19) of Appendix A to this part, and include:

(1) The previous fiscal year of the producer;

(2) The previous calendar year;

(3) The quarter or month to date in which the vehicle is produced or exported;

(4) The producer's fiscal year to date in which the vehicle is produced or exported; or

(5) The calendar year to date in which the vehicle is produced or exported.

(e) *Additional calculation periods.* If the fiscal year of the producer of a covered vehicle begins after July 1, 2020, but before July 1, 2021, the producer may base the LVC calculation over the period beginning on July 1, 2020 and ending at the end of the following fiscal year, as provided for in sections 16(4) and 16(5) of Appendix A to this part.

(1) *Additional calculation periods applicable to all covered vehicles.* For the period from July 1, 2020 to June 30, 2023, the producer of a covered vehicle may base the LVC calculation over the following periods:

(i) July 1, 2020 to June 30, 2021;

(ii)

July 1, 2021 to June 30, 2022;

(iii) July 1, 2022 to June 30, 2023; and

(iv) July 1, 2023 to the end of the producer's fiscal year.

(2) *Additional calculation periods for heavy trucks.* In addition to the calculation periods contained in paragraph (e)(1) of this section, the producer of a heavy truck may base the LVC calculation of a heavy truck over the following additional periods:

(i) July 1, 2023 to June 30, 2024;

(ii) July 1, 2024 to June 30, 2025;

(iii) July 1, 2025 to June 30, 2026;

(iv) July 1, 2026 to June 30, 2027; and

(v) July 1, 2027 to the end of the producer's fiscal year.

(3) *Calculation periods.* When basing the LVC calculation over the additional calculation periods set forth in this paragraph, the producer may calculate:

(i) Beginning on July 1 of the previous year and ending on June 30 of the current year, except for the additional calculation periods set forth in paragraph (e)(1)(iv) or (e)(2)(v) of this section when the period ends at the end of the producer's fiscal year; or

(ii) Beginning on July 1 of the current year and ending on June 30 of the following year, except for the additional calculation periods in paragraph (e)(1)(iv) or (e)(2)(v) of this section when the period ends at the end of the producer's fiscal year.

■ 57. Add § 182.94 to subpart I to read as follows:

§ 182.94 Steel purchasing and aluminum purchasing requirements.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets both the steel purchasing and the aluminum purchasing requirements, as set forth in General Note 11(k)(v), HTSUS, and section 17 of Appendix A to this part or, if the producer is subject to alternative staging regime, General Note 11(k)(viii), HTSUS, and section 19 of Appendix A of this part.

(b) *Steel and aluminum purchasing calculations.* For the purpose of determining whether the producer of a covered vehicle has met the steel or aluminum purchasing requirement, the producer must calculate the steel and aluminum requirements pursuant to General Note 11(k)(v), HTSUS, and section 17 of Appendix A to this part. The producer may calculate the value of the steel and aluminum purchases using a method in section 17(6) of Appendix A to this part and may calculate the purchases of steel or aluminum on the basis of the categories set forth in in section 17(9) of Appendix A to this part.

(c) *Calculation periods.* The producer of a covered vehicle may calculate the purchases of steel or aluminum over the calculation periods set forth in either this paragraph or paragraph (d) of this section. The following calculation periods are provided for in section 17(7) of Appendix A to this part, and include:

(1) The previous fiscal year of the producer;

(2) The previous calendar year;

(3) The quarter or month to date in which the vehicle is exported;

(4) The producer's fiscal year to date in which the vehicle is exported; or

(5) The calendar year to date in which the vehicle is exported.

(d) *Additional calculation periods.* If the fiscal year of a producer begins after July 1, 2020, but before July 1, 2021, the producer of a covered vehicle may calculate the purchases of steel and aluminum over the period beginning on July 1, 2020 and ending at the end of the following fiscal year, as provided for in sections 16(4) and 16(5) of Appendix A to this part.

(1) *Additional calculation periods applicable to all covered vehicles.* For the period from July 1, 2020 to June 30, 2023, the producer of a covered vehicle may calculate the purchases of steel and aluminum over the following periods:

(i) July 1, 2020 to June 30, 2021;

(ii) July 1, 2021 to June 30, 2022;

(iii) July 1, 2022 to June 30, 2023; and

(iv) July 1, 2023 to the end of the producer's fiscal year.

(2) *Additional calculation periods for heavy trucks.* In addition to the calculation periods set forth in paragraph (d)(1) of this section, the producer of a heavy truck may calculate the purchases of steel and aluminum for a heavy truck over the additional following periods:

(i) July 1, 2023 to June 30, 2024;

(ii) July 1, 2024 to June 30, 2025;

(iii) July 1, 2025 to June 30, 2026;

(iv) July 1, 2026 to June 30, 2027; and

(v) July 1, 2027 to the end of the producer's fiscal year.

(3) *Calculation periods.* When calculating the purchases of steel and aluminum over the additional calculation periods set forth in this paragraph, the producer may calculate:

(i) beginning on July 1 of the previous year and ending on June 30 of the current year, except for the additional calculation periods set forth in paragraph (d)(1)(iv) or (d)(2)(v) of this section when the period ends at the end of the producer's fiscal year; or

(ii) beginning on July 1 of the current year and ending on June 30 of the following year, except for the additional calculation periods in paragraph (d)(1)(iv) or (d)(2)(v) of this section when the period ends at the end of the producer's fiscal year.

(e) *Calculation periods may differ.* The producer of a covered vehicle may choose different calculation periods for its steel purchasing calculation and aluminum purchasing calculation.

■ 58. Add § 182.95 to subpart I to read as follows:

§ 182.95 Labor value content (LVC) certification.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the LVC requirement, as described in § 182.93 of this subpart. The producer of the covered vehicle must have information in its possession in accordance with § 182.103(a) of this subpart that proves the accuracy of the calculations relied on for the LVC certification.

(b) *Submission of LVC certification for vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the LVC requirement or contain different requirements than the LVC requirement set forth in § 182.93 of this subpart, the producer of the covered vehicle must submit to CBP a LVC certification that covers only those vehicles subject to the alternative staging regime pursuant to § 182.106(c) of this subpart.

(c) *LVC certification data elements.* The LVC certification must include the information required by 29 CFR part 810 and the following information:

(1) *Producer.* The certifying vehicle producer's name, corporate address (including country), Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, and a point of contact for the certifying vehicle producer;

(2) *Certifier.* The name, title, address (including country), telephone number, and email address of the person completing the certification;

(3) *LVC calculation.* The calculation used to determine that the production of covered vehicles specified under paragraph (c)(4) of this section meets the LVC requirement in General Note 11(k)(vi), HTSUS, § 182.93(c) of this subpart, and Appendix A to this part. The calculation should include each of the elements described in the formula based on net cost, as set forth in section 18(6)(a) of Appendix A to this part, or in the formula based on total annual purchase value, as set forth in section 18(6)(b) of Appendix A to this part, and the resulting LVC percentage;

(4) *Vehicle category.* The vehicle class, model line, and/or other category indicating the motor vehicles covered by the certification;

(5) *Calculation period.* For the calculation provided in paragraph (c)(3) of this section, the calculation period over which the calculation is made, as specified in § 182.93(d) and (e) of this subpart;

(6) *Plant or facility information.* The name, address, and Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for each plant or facility the producer of the covered vehicle is relying on to meet the high-wage material and manufacturing expenditures component of the LVC requirement for the calculation provided in paragraph (c)(3) in this section;

(7) *Average hourly base wage rate.* A statement that the average hourly base wage rate, calculated as required by DOL's regulations at 29 CFR part 810, meets or exceeds US $16 per hour for each plant or facility identified in paragraph (c)(6) of this section;

(8) *High-wage transportation or related costs.* If applicable, a statement that the producer is using high-wage transportation or related costs to meet the high-wage material and manufacturing expenditures component. If the producer is using high-wage transportation or related costs, the producer must identify the company name, address, and Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for each company the producer used to calculate its high-wage transportation or related costs for the calculation provided in paragraph (c)(3) of this section;

(9) *High-wage technology expenditures credit.* If applicable, a statement that the producer is using the high-wage technology expenditures credit to meet the LVC requirement for the calculation provided in paragraph (c)(3) of this section. If the producer is using the high-wage technology expenditures credit, a producer must identify the percentage the producer is claiming as a credit towards the total LVC requirement; and

(10) *High-wage assembly expenditures credit.* If applicable, a statement that the producer is using the high-wage assembly expenditures credit to meet the LVC requirement for the calculation provided in

paragraph (c)(3) of this section. If the producer is using the high-wage assembly expenditures credit, the producer must identify the following:

(i) The name, address, and Federal Employer Identification Number (for U.S. plants) or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for the assembly plant the producer used to qualify for the high-wage assembly expenditures credit; and

(ii) A statement that the average hourly base wage rate, calculated as required by DOL's regulations at 29 CFR part 810, meets or exceeds US $16 per hour for the assembly plant used to qualify for the high-wage assembly expenditures credit.

(11) *Authorized signature, date and certifying statement.* The certification must be signed and dated by the certifier and include the following certifying statement: "I certify that, for the vehicle category and over the relevant period indicated in this document, the producer has satisfied the LVC requirement as set out in General Note 11(k)(vi), HTSUS, section 18 of the Uniform Regulations regarding Rules of Origin, and 19 CFR 182.93. The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification."

(d) *Responsible official or agent.* The LVC certification must be signed and dated by a responsible official of the producer, or by the producer's authorized agent having knowledge of the relevant facts.

(e) *Language.* The LVC certification must be completed in English, French, or Spanish. If the LVC certification is not in English, CBP may require the producer to submit an English translation of the certification.

(f) *Submission of LVC certification.* The producer of the covered vehicle must submit the LVC certification to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period described in paragraph (j) of this section.

(g) *Review of LVC certification to determine whether it is properly filed.* After the producer of the covered vehicle submits the LVC certification to CBP pursuant to paragraphs (f) or (i) of this section, the LVC certification will be reviewed for omissions and errors to determine whether the certification has been properly filed.

(1) *Review for omissions and errors.* DOL, in consultation with CBP, will review the LVC certification for omissions and errors to determine whether the certification has been properly filed.

(2) *LVC certification contains no omissions or errors.* Upon a determination that the LVC certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section.

(3) *LVC certification contains omissions or errors.* Upon a determination that the LVC certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that an omission or error was discovered, provide a description of the omission or error, and that the producer has the right to submit a revised LVC certification.

(i) *Submission of revised LVC certification.* Upon receipt of this notification that an omission or error was discovered, the producer must submit a revised certification or an explanation of why the producer believes the certification contains no omission or error to CBP within five business days. If no revised certification is submitted within the five business days, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has not been properly filed.

(ii) *Review of revised LVC certification.* Upon a determination that the revised LVC certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section. Upon a determination that the revised LVC certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

(h) *Making a claim for USMCA preferential tariff treatment during review for omissions and errors period.* If the LVC certification was filed by the required date, as specified in paragraph (f) of this section, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles during the period of review for omissions and errors, as described in paragraph (g) of this section, until the producer has received notice from CBP that the LVC certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed under paragraph (g)(3)(ii) of this section. If the producer receives notice that the LVC certification has not been properly filed under paragraph (g)(3)(ii) of this section, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle of that determination within 30 days of receipt of the CBP notice.

(i) *Resubmission of the LVC certification upon determination that the LVC certification was not properly filed.* Upon notification that the LVC certification has not been properly filed under paragraph (g)(3)(ii) of this section, the producer of the covered vehicle may, within 10 business days of receiving the notification, resubmit a new LVC certification to CBP.

(1) *Resubmission process.* The producer must resubmit a new LVC certification to CBP pursuant to the means set forth in paragraph (f) of this section and CBP will use the review of omissions and errors process as described in paragraph (g) of this section to determine whether the new certification is properly filed.

(2) *Right to resubmit LVC certification.* The producer may resubmit a new LVC certification for the same category and same calculation period up to two times per certification period, as described in this section.

(3) *Making a claim for USMCA preferential tariff treatment during resubmission period.* Notwithstanding paragraph (h) of this section, if a producer chooses to resubmit the new LVC certification, an importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the new certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

(j) *Certification periods.* (1) For an LVC calculation based on the previous fiscal year of the producer pursuant to § 182.93(d)(1) of this subpart, the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period;

(2) For an LVC calculation based on the previous calendar year pursuant to § 182.93(d)(2) of this subpart, the certification period begins on the first day of the following calendar year. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period;

(3) For all other LVC calculation periods pursuant to § 182.93(d) of this subpart, the certification period begins on the first day of that calculation period. If the certification is considered properly filed, the

certification is effective for covered vehicles produced or exported, as the case may be, within that period;

(4) For an LVC calculation based on an additional calculation period calculated pursuant to § 182.93(e)(3)(i) of this subpart, the certification period begins on first day of the following period, meaning July 1 of the current year and ends on June 30 of the following year, except for the additional calculation periods in § 182.93(e)(1)(iv) or (e)(2)(v) when the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period; and

(5) For an LVC calculation based on an additional calculation period calculated pursuant to § 182.93(e)(3)(ii) of this subpart, the certification period begins on the first day of that calculation period, meaning July 1 of the current year and ends on the last day of the calculation period, except for the additional calculation periods in § 182.93(e)(1)(iv) or (e)(2)(v) when the certification period begins on the first day of the current fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period.

(k) *Request for modification of a properly filed LVC certification.* The producer of the covered vehicle must request a modification of a properly filed LVC certification in the event of any material changes to the information contained in the certification that would affect its validity.

(1) *Submission process.* The producer must submit a modification request to CBP by submitting a new certification through the means set forth in paragraph (f) of this section, along with a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity of the certification. If CBP grants the modification request, DOL, in consultation with CBP, will review the new LVC certification to determine whether it is properly filed in accordance with the procedures set forth in paragraph (g) of this section. If CBP denies the modification request, CBP will provide written or electronic notification to the producer of the covered vehicle.

(2) *Resubmission process.* The producer may resubmit the new certification, pursuant to the procedures in paragraph (i) of this section, upon a determination that the new certification was not properly filed. The producer may resubmit the new LVC certification up to two times in accordance with paragraph (i)(2) of this section.

(3) *Effective date of new LVC certification.* If CBP determines that the new certification is properly filed under paragraph (g) or (i) of this

section, the new certification supersedes the former certification and is effective for the period specified in paragraph (j) of this section. Within 30 days of receiving notice that the new certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

■ 59. Add § 182.96 to subpart I to read as follows:

§ 182.96 Steel purchasing certification.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the steel purchasing requirement, as described in § 182.94 of this subpart. The producer of the covered vehicle must have information in its possession in accordance with § 182.103(a) of this subpart that proves the accuracy of the calculations relied on for the steel purchasing certification.

(b) *Submission of steel purchasing certification for vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the steel purchasing requirements or contain different requirements from the steel purchasing requirements set forth in § 182.94 of this subpart, the producer of the covered vehicle must submit to CBP a steel purchasing certification that covers only those vehicles subject to the alternative staging regime pursuant to § 182.106(c) of this subpart.

(c) *Steel purchasing certification data elements.* The steel purchasing certification must include:

(1) *Producer.* The producer of the covered vehicle's name, address (including country), email address, telephone number, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with the producer. The address of a producer provided under this paragraph is the place of production of the good in a USMCA country's territory;

(2) *Certifier.* The name, title, address (including country), telephone number, and email address of the person completing the certification;

(3) *Producer's purchases of steel.* The calculation used to determine that the producer of the covered vehicle has complied with the steel purchasing requirement in General Note 11(k)(v), HTSUS, and Appendix A to this part. The calculation should include the total value of the vehicle producer's purchases at the corporate level of steel listed in Table S of Appendix A to this part in the territories of one or more

of the USMCA countries, the total value of those purchases that qualify as originating goods, and the resulting percentage;

(4) *Vehicle category.* For the calculation provided in paragraph (c)(3) of this section, the vehicle category for which the purchases are calculated, as specified in section 17(9) of Appendix A to this part;

(5) *Calculation periods.* For the calculation provided in paragraph (c)(3) of this section, the calculation period over which the purchases are made, as specified in § 182.94(c) and (d) of this subpart;

(6) *Steel producer, service center, or distributor.* The name and address (including country) for each steel producer, service center, or distributor relied upon in calculating the total value of purchases of steel that qualify as originating goods under paragraph (c)(3) of this section, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with those entities; and

(7) *Authorized signature, date and certifying statement.* The certification must be signed and dated by the certifier and include the following certifying statement: "I certify that, for the vehicle category and over the relevant period indicated in this document, the producer has satisfied the steel purchasing requirement as set out in General Note 11(k)(v), HTSUS, section 17 of the Uniform Regulations regarding Rules of Origin, and 19 CFR 182.94. The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification."

(d) *Responsible official or agent.* The steel purchasing certification must be signed and dated by a responsible official of the producer, or by the producer's authorized agent having knowledge of the relevant facts.

(e) *Language.* The steel purchasing certification must be completed in English, French, or Spanish. If the certification is not in English, CBP may require the producer to submit an English translation of the certification.

(f) *Submission of steel purchasing certification.* The producer of the covered vehicle must submit the steel purchasing certification to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period described in paragraph (j) of this section.

(g) *Review of steel purchasing certification to determine whether it is properly filed.* After the producer of the covered vehicle submits the steel purchasing certification to CBP pursuant to paragraph (f) or (i) of this section, CBP will review the certification for errors or omissions to determine whether the certification has been properly filed.

(1) *Steel purchasing certification contains no omissions or errors.* If, upon review of the certification, CBP determines the certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section.

(2) *Steel purchasing certification contains omissions or errors.* If, upon review of the certification, CBP determines that the certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that an omission or error was discovered, provide a description of the omission or error, and that the producer has the right to submit a revised steel purchasing certification.

(i) *Submission of revised steel purchasing certification.* Upon receipt of this notification that an omission or error was discovered, the producer must submit a revised certification or an explanation of why the producer believes the certification contains no omission or error to CBP within five business days. If no revised certification is submitted within the five business days, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has not been properly filed.

(ii) *Review of revised steel purchasing certification.* Upon a determination that the revised steel purchasing certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section. Upon a determination that the revised steel purchasing certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

(h) *Making a claim for USMCA preferential tariff treatment during review for omissions and errors period.* If the steel purchasing certification was filed by the required date, as specified in paragraph (f) of this section, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles during the period of review for omissions and errors, as described in paragraph (g) of this section, until the producer has received notice from CBP that the steel purchasing certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed under paragraph (g)(2)(ii) of this section. If the producer receives notice that the steel purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle of that determination within 30 days of receipt of the CBP notice.

(i) *Resubmission of the steel purchasing certification upon determination that the steel purchasing certification was not properly filed.* Upon notification that the steel purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer of the covered vehicle may, within 10 business days of receiving the notification, resubmit a new steel purchasing certification to CBP.

(1) *Resubmission process.* The producer must resubmit a new steel purchasing certification to CBP pursuant to the means set forth in paragraph (f) of this section and CBP will use the review of omissions and errors process as described in paragraph (g) of this section to determine whether the new certification is properly filed.

(2) *Right to resubmit steel purchasing certification.* The producer may resubmit a new steel purchasing certification for the same category and same calculation period up to two times per certification period, as described in this section.

(3) *Making a claim for USMCA preferential tariff treatment during resubmission period.* Notwithstanding paragraph (h) of this section, if a producer chooses to resubmit the new steel purchasing certification, an importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the new certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

(j) *Certification periods.* (1) For a steel purchasing calculation based on the previous fiscal year of the producer pursuant to § 182.94(c)(1) of this subpart, the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(2) For a steel purchasing calculation based on the previous calendar year pursuant to § 182.94(c)(2) of this subpart, the certification period begins on the first day of the following calendar year. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(3) For all other steel purchasing calculation periods pursuant to § 182.94(c) of this subpart, the certification period begins on the first

day of that calculation period. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period;

(4) For a steel purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(i) of this subpart, the certification period begins on first day of the following period, meaning July 1 of the current year and ends on June 30 of the following year, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period; and

(5) For a steel purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(ii) of this subpart, the certification period begins on the first day of that calculation period, meaning July 1 of the current year and ends on the last day of the calculation period, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the current fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period.

(k) *Request for modification of a properly filed steel purchasing certification.* The producer of the covered vehicle must request a modification of a properly filed steel purchasing certification in the event of any material changes to the information contained in the certification that would affect its validity.

(1) *Submission process.* The producer must submit a modification request to CBP by submitting a new certification through the means set forth in paragraph (f) of this section, along with a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity of the certification. If CBP grants the modification request, CBP will review the new steel purchasing certification to determine whether it is properly filed in accordance with the procedures set forth in paragraph (g) of this section. If CBP denies the modification request, CBP will provide written or electronic notification to the producer of the covered vehicle.

(2) *Resubmission process.* The producer may resubmit the new certification, pursuant to the procedures in paragraph (i) of this section, upon a determination that the new certification was not properly filed. The producer may resubmit the new steel purchasing certification up to two times in accordance with paragraph (i)(2) of this section.

(3) *Effective date of new steel purchasing certification.* If CBP determines that the new certification is properly filed under paragraph (g) or (i) of this section, the new certification supersedes the former certification and is effective for the period specified in paragraph (j) of this section. Within 30 days of receiving notice that the new certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

■ 60. Add § 182.97 to subpart I to read as follows:

§ 182.97 Aluminum purchasing certification.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the aluminum purchasing requirement, as described in § 182.94 of this subpart. The producer of the covered vehicle must have information in its possession in accordance with § 182.103(a) of this subpart that proves the accuracy of the calculations relied on for the aluminum purchasing certification.

(b) *Submission of aluminum purchasing certification for vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the aluminum purchasing requirements or contain different requirements from the aluminum purchasing requirements set forth in § 182.94 of this subpart, the producer of the covered vehicle must submit to CBP an aluminum purchasing certification that covers only those vehicles subject to the alternative staging regime pursuant to § 182.106(c) of this subpart.

(c) *Aluminum purchasing certification data elements.* The aluminum purchasing certification must include:

(1) *Producer.* The producer of the covered vehicle's name, address (including country), email address, telephone number, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with the producer. The address of a producer provided under this paragraph is the place of production of the good in a USMCA country's territory;

(2) *Certifier.* The name, title, address (including country), telephone number, and email address of the person completing the certification;

(3) *Producer's purchase of aluminum.* The calculation used to determine that the producer of the covered vehicle has complied with the aluminum purchasing requirement in General Note 11(k)(v), HT-

SUS, and Appendix A to this part. The calculation should include the total value of the vehicle producer's purchases at the corporate level of aluminum listed in Table S of Appendix A to this part in the territories of one or more of the USMCA countries, the total value of those purchases that qualify as originating goods, and the resulting percentage;

(4) *Vehicle category.* For the calculation provided in paragraph (c)(3) of this section, the vehicle category for which the purchases are calculated, as specified in section 17(9) of Appendix A to this part;

(5) *Calculation periods.* For the calculation provided in paragraph (c)(3) of this section, the calculation period over which the purchases are made, as specified in § 182.94(c) and (d) of this subpart;

(6) *Aluminum producer, service center, or distributor.* The name and address (including country) for each aluminum producer, service center, or distributor relied upon in calculating the total value of purchases of aluminum that qualify as originating goods under paragraph (c)(3) of this section, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with those entities; and

(7) *Authorized signature, date and certifying statement.* The certification must be signed and dated by the certifier and include the following certifying statement: "I certify that, for the vehicle category and over the relevant period indicated in this document, the producer has satisfied the aluminum purchasing requirement as set out in General Note 11(k)(v), HTSUS, section 17 of the Uniform Regulations regarding Rules of Origin, and 19 CFR 182.94. The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification."

(d) *Responsible official or agent.* The aluminum purchasing certification must be signed and dated by a responsible official of the producer, or by the producer's authorized agent having knowledge of the relevant facts.

(e) *Language.* The aluminum purchasing certification must be completed in English, French, or Spanish. If the certification is not in English, CBP may require the producer to submit an English translation of the certification.

(f) *Submission of aluminum purchasing certification.* The producer of the covered vehicle must submit the aluminum purchasing certification to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period described in paragraph (j) of this section.

(g) *Review of aluminum purchasing certification to determine whether it is properly filed.* After the producer of the covered vehicle submits the aluminum purchasing certification to CBP pursuant to paragraph (f) or (i) of this section, CBP will review the certification for errors or omissions to determine whether the certification has been properly filed.

(1) *Aluminum purchasing certification contains no omissions or errors.* If, upon review of the certification, CBP determines the certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section.

(2) *Aluminum purchasing certification contains omissions or errors.* If, upon review of the certification, CBP determines that the certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that an omission or error was discovered, provide a description of the omission or error, and that the producer has the right to submit a revised aluminum purchasing certification.

(i) *Submission of revised aluminum purchasing certification.* Upon receipt of this notification that an omission or error was discovered, the producer must submit a revised certification or an explanation of why the producer believes the certification contains no omission or error to CBP within five business days. If no revised certification is submitted within the five business days, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has not been properly filed.

(ii) *Review of revised aluminum purchasing certification.* Upon a determination that the revised aluminum purchasing certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section. Upon a determination that the revised aluminum purchasing certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

(h) *Making a claim for USMCA preferential tariff treatment during review for omissions and errors period.* If the aluminum purchasing certification was filed by the required date, as specified in paragraph

(f) of this section, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles during the period of review for omissions and errors, as described in paragraph (g) of this section, until the producer has received notice from CBP that the aluminum purchasing certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed under paragraph (g)(2)(ii) of this section. If the producer receives notice that the aluminum purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle of that determination within 30 days of receipt of the CBP notice.

(i) *Resubmission of the aluminum purchasing certification upon determination that the aluminum purchasing certification was not properly filed.* Upon notification that the aluminum purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer of the covered vehicle may, within 10 business days of receiving the notification, resubmit a new aluminum purchasing certification to CBP.

(1) *Resubmission process.* The producer must resubmit a new aluminum purchasing certification to CBP pursuant to the means set forth in paragraph (f) of this section and CBP will use the review of omissions and errors process as described in paragraph (g) of this section to determine whether the new certification is properly filed.

(2) *Right to resubmit aluminum purchasing certification.* The producer may resubmit a new aluminum purchasing certification for the same category and same calculation period up to two times per certification period, as described in this section.

(3) *Making a claim for USMCA preferential tariff treatment during resubmission period.* Notwithstanding paragraph (h) of this section, if a producer chooses to resubmit the new aluminum purchasing certification, an importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the new certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

(j) *Certification periods.* (1) For an aluminum purchasing calculation based on the previous fiscal year of the producer pursuant to § 182.94(c)(1) of this subpart, the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(2) For an aluminum purchasing calculation based on the previous calendar year pursuant to § 182.94(c)(2) of this subpart, the certification period begins on the first day of the following calendar year. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(3) For all other aluminum purchasing calculation periods pursuant to § 182.94(c) of this subpart, the certification period begins on the first day of that calculation period. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period;

(4) For an aluminum purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(i) of this subpart, the certification period begins on first day of the following period, meaning July 1 of the current year and ends on June 30 of the following year, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period; and

(5) For an aluminum purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(ii) of this subpart, the certification period begins on the first day of that calculation period, meaning July 1 of the current year and ends on the last day of the calculation period, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the current fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period.

(k) *Request for modification of a properly filed aluminum purchasing certification.* The producer of the covered vehicle must request a modification of a properly filed aluminum purchasing certification in the event of any material changes to the information contained in the certification that would affect its validity.

(1) *Submission process.* The producer must submit a modification request to CBP by submitting a new certification through the means set forth in paragraph (f) of this section, along with a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity of the certification. If CBP grants the modification request, CBP will review the new aluminum purchasing certification to determine whether it is properly filed in accordance with the proce-

dures set forth in paragraph (g) of this section. If CBP denies the modification request, CBP will provide written or electronic notification to the producer of the covered vehicle.

(2) *Resubmission process.* The producer may resubmit the new certification, pursuant to the procedures in paragraph (i) of this section, upon a determination that the new certification was not properly filed. The producer may resubmit the new aluminum purchasing certification up to two times in accordance with paragraph (i)(2) of this section.

(3) *Effective date of new aluminum purchasing certification.* If CBP determines that the new certification is properly filed under paragraph (g) or (i) of this section, the new certification supersedes the former certification and is effective for the period specified in paragraph (j) of this section. Within 30 days of receiving notice that the new certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

■ 61. Add § 182.98 to subpart I to read as follows:

§ 182.98 Appeal of the determination that LVC, steel purchasing, or aluminum purchasing certification is not properly filed.

(a) *Producer of a covered vehicle's right to appeal.* If, following the review of the second resubmission of the vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2) of this subpart, CBP determines that the vehicle certification is not properly filed as provided in §§ 182.95(g)(3)(ii), 182.96(g)(2)(ii), and 182.97(g)(2)(ii) of this subpart, the producer of the covered vehicle may file a written appeal. This filing cannot be made unless the producer utilized both opportunities for resubmission of a vehicle certification and the producer has received notification from CBP that the resubmitted certification has not been properly filed. The determination as to whether a vehicle certification is properly filed does not qualify as a matter subject to protest under part 174 of this chapter.

(b) *Appeal of not properly filed determination.* Upon receipt of notification that the vehicle certification is not properly filed, following the second resubmission of the vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2) of this subpart, the producer of the covered vehicle may file a written appeal to CBP Headquarters, Trade Policy and Programs, Office of Trade. This filing must be received by CBP within 14 days of the producer of the covered vehicle receiving the notification that, following the second resubmission, the certification was not properly filed. The Office of Trade will review the not properly filed determination and will render a written decision on the appeal within 30 days after receipt of the appeal. When an appeal involves DOL's review of the LVC certification for omissions and errors, CBP will coordinate with DOL regarding the appeal as necessary.

(c) *Making a claim for USMCA preferential tariff treatment during appeal period.* If a producer of the covered vehicle chooses to appeal the determination that a vehicle certification is not properly filed under this section, an importer of the covered vehicle may not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the vehicle certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

§ 182.99 [Reserved]

■ 62. Add and reserve § 182.99 to subpart I.

■ 63. Add § 182.100 to subpart I to read as follows:

§ 182.100 Motor vehicle averaging elections.

(a) *RVC averaging.* For the purpose of calculating the regional value content (RVC) of a covered vehicle, the producer of the vehicle may elect to average the RVC calculation. The producer must comply with all the RVC averaging provisions set forth in section 16 of Appendix A to this part to elect RVC averaging.

(1) *RVC averaging categories.* The producer of a covered vehicle may elect to average its RVC calculation using any of the categories provided for in section 16(1) of Appendix A to this part, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(i) The same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(ii) The same class of motor vehicles produced in the same plant in the territory of a USMCA country;

(iii) The same model line or same class of motor vehicles produced in the territory of a USMCA country; or

(iv) Any other category as the USMCA countries may decide.

(2) *RVC averaging periods.* For purposes of calculating the RVC of a covered vehicle, the calculation may be averaged over the producer's fiscal year. If the fiscal year of a producer begins after July 1, 2020, but before July 1, 2021, the producer may base the RVC calcu-

lation over the period beginning on July 1, 2020 and ending at the end of the following fiscal year, as provided for in section 16(4) and 16(5) of Appendix A to this part.

(i) *RVC averaging periods applicable to all covered vehicles.* For the period from July 1, 2020 to June 30, 2023, the producer of a covered vehicle may base the RVC calculation over the following periods:

(A) July 1, 2020 to June 30, 2021;

(B) July 1, 2021 to June 30, 2022;

(C) July 1, 2022 to June 30, 2023; and

(D) July 1, 2023 to the end of the producer's fiscal year.

(ii) *Additional RVC averaging periods for heavy trucks.* In addition to the calculation periods set forth in paragraph (a)(2) of this section, a producer of a heavy truck may base the RVC calculation of a heavy truck over the additional following periods:

(A) July 1, 2023 to June 30, 2024;

(B) July 1, 2024 to June 30, 2025;

(C) July 1, 2025 to June 30, 2026;

(D) July 1, 2026 to June 30, 2027; and

(E) July 1, 2027 to the end of the producer's fiscal year.

(3) *Election to average.* A producer of a covered vehicle who elects to average its RVC calculation must file an averaging election with CBP pursuant to paragraph (c) of this section.

(b) *LVC averaging.* For purposes of calculating the LVC of a covered vehicle, the producer of the vehicle may elect to average the LVC calculation. The producer must comply with all the LVC averaging provisions set forth in section 18 of Appendix A to this part to elect LVC averaging.

(1) *LVC averaging categories.* The producer of a covered vehicle may elect to average its LVC calculation using any of the categories provided for in section 18(15) of Appendix A to this part, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries.

(2) *LVC averaging periods.* For purposes of calculating the LVC of a covered vehicle, the calculation may be averaged over the calculation periods as described in § 182.93(d) and (e) of this subpart.

(3) *Election to average.* A producer of a covered vehicle who elects to average its LVC calculation must file an averaging election with CBP pursuant to paragraph (c) of this section.

(c) *Filing of RVC and LVC averaging elections.* If the producer of a covered vehicle elects to average its RVC or LVC calculations, the producer must file an RVC or LVC averaging election with CBP via an authorized electronic data interchange system or other specified means at least 10 days before the first day of the producer's fiscal year during which the vehicles will be exported, or such shorter period as CBP may accept.

(d) *RVC averaging election required data elements.* When filing an RVC averaging election pursuant to paragraph (c) of this section, the averaging election must include:

(1) *Producer.* The producer of the covered vehicle's name, address (including country), email address, and telephone number;

(2) *Averaging period.* The period with respect to which the election is made pursuant to paragraph (a)(2) of this section, including the starting and ending dates;

(3) *Averaging category.* The averaging category chosen by the producer pursuant to paragraph (a)(1) of this section;

(4) *Vehicles to be averaged.* The model name, the model line (if the averaging category under section 16(1)(a) or 16(1)(c) of Appendix A to this part is chosen), class of motor vehicle, and tariff classification of the motor vehicles in that category;

(5) *Location of the plant.* The location(s) of the plant at which the motor vehicles are produced;

(6) *Basis of calculation.* Whether the basis of the calculation is all vehicles in that category chosen by the producer or only those vehicles in that category that are exported to the territory of one or more of the other USMCA countries;

(7) *Basis of regional value content.* The basis of the calculation in determining the estimated RVC of motor vehicles pursuant to paragraph (a) of this section; and

(8) *Authorized signature and date.* The authorized officer's name, title, address (including country), telephone number, email address, signature, and date.

(e) *LVC averaging election required data elements.* When filing an LVC averaging election pursuant to paragraph (c) of this section, the averaging election must include:

(1) *Producer.* The producer's name, address (including country), email address, and telephone number;

(2) *Averaging period.* The period with respect to which the election is made pursuant to paragraph (b)(2) of this section, including the starting and ending dates;

(3) *Averaging category.* The averaging category chosen by the producer pursuant to paragraph (b)(1) of this section;

(4) *Vehicles to be averaged.* The model name, the model line (if the averaging category under section 18(15)(a) and 18(15)(c) of Appendix A to this part is chosen), class of motor vehicle, and tariff classification of the motor vehicles in that category;

(5) *Location of the plant.* The location(s) of the plant at which the motor vehicles are produced;

(6) *Basis of calculation.* Whether the basis of the calculation is all vehicles in that category chosen by the producer or only those vehicles in that category that are exported to the territory of one or more of the other USMCA countries;

(7) *Estimated LVC and net cost.* The estimated LVC and net cost of vehicles in that category with respect to the basis of calculation ; and

(8) *Authorized signature and date.* The authorized officer's name, title, address (including country), telephone number, email address, signature, and date.

(f) *Cost submission for motor vehicles.* A producer of a covered vehicle who files an RVC or LVC averaging election pursuant to paragraph (c) of this section must submit, at the request of CBP, a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. The requested cost submission must be submitted to CBP within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

■ 64. Add § 182.101 to subpart I to read as follows:

§ 182.101 Averaging for other automotive goods.

(a) *Automotive parts.* For the purpose of calculating the RVC of an automotive good provided for in section 16(10) of Appendix A to this part, the producer of the automotive good may average its RVC calculation pursuant to the provisions set forth in sections 16(5) and 16(10) of Appendix A to this part.

(b) *Other vehicles.* For the purpose of calculating the RVC of a motor vehicle provided for in sections 20(2) or (3) of Appendix A to this part, the producer of the automotive good may average its RVC calculation pursuant to the provisions set forth in sections 16(5) and section 20(6) of Appendix A to this part.

(c) *Averaging election not required.* The producer of the automotive good is not required to file an RVC averaging election with CBP when averaging the RVC pursuant to this section.

■ 65. Add § 182.102 to subpart I to read as follows:

§ 182.102 Required year-end reconciliation to actual costs when estimated costs or purchases used.

(a) *Year-end reconciliation required.* (1) *RVC and LVC.* When the producer of a covered vehicle has calculated the RVC or LVC of its vehicles on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer must conduct a reconciliation at the end of the producer's fiscal year to the actual costs incurred over the period with respect to the production of the vehicle, irrespective of whether the producer filed an averaging election pursuant to § 182.100 of this subpart.

(2) *Steel and aluminum purchases.* When the producer of a covered vehicle has calculated steel and aluminum purchases on the basis of estimates before or during the applicable period, the producer must conduct a reconciliation at the end of the producer's fiscal year to the actual purchases made over the period with respect to the production of the vehicle.

(b) *Notification.* If, based on the year-end reconciliation performed under paragraph (a) of this section, the covered vehicle does not satisfy the RVC or LVC requirement on the basis of the actual costs, or the steel or aluminum purchasing requirement on the basis of the actual purchases, the producer must, within 30 days of making that determination:

(1) Provide written notification to CBP that the vehicle is a non-originating good; and

(2) Inform any person to whom the producer has provided a certification of origin for the vehicle, or a written statement that the vehicle is an originating good, that the vehicle is a non-originating good.

■ 66. Add § 182.103 to subpart I to read as follows:

§ 182.103 Producer and exporter recordkeeping responsibilities for records relating to LVC, steel purchasing, and aluminum purchasing requirements.

(a) *Producer recordkeeping responsibilities.* A producer of a covered vehicle whose good is subject to a claim for USMCA preferential tariff treatment must make and keep, for a minimum of five years from the date that the vehicle certifications were submitted to CBP, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and all records and supporting documents that the producer of the covered vehicle has to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The records must be capable of being retrieved upon lawful request or demand by CBP. The producer of the covered vehicle must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810, and produce such records to DOL upon request.

(b) *Exporter who completed the certification of origin recordkeeping responsibilities.* An exporter who completed the certification of origin for a covered vehicle must keep, for a minimum of five years from the date that the certification of origin was completed, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and all records and supporting documents that the exporter has to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The records must be capable of being retrieved upon lawful request or demand by CBP. The exporter must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810, and produce such records to DOL upon request.

■ 67. Add § 182.104 to subpart I to read as follows:

§ 182.104 Importer's responsibility to maintain records relating to LVC, steel purchasing, and aluminum purchasing requirements.

(a) *General.* In addition to any other records that the importer is required to prepare, maintain, or make available to CBP under this part or under part 163 of this chapter, an importer claiming USMCA preferential tariff treatment for a covered vehicle has additional recordkeeping responsibilities. The extent of the importer's recordkeeping responsibilities depends on whether the importer completed the certification of origin.

(1) *Claims based on certification of origin completed by the exporter or producer.* If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the exporter or producer, the importer must maintain, for a minimum of five years from the date of importation of the covered vehicle, any records and supporting documents in the importer's possession relating to the LVC, steel purchasing, and aluminum purchasing certifications that formed the basis for the covered vehicle's eligibility for USMCA preferential tariff treatment; or

(2) *Claims based on certification of origin completed by the importer.* If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the importer, the importer must maintain, for a minimum of five years from the date of importation of the covered vehicle, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and all records and supporting documents to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The importer must also maintain any records related to the

high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810, and produce such records to DOL upon request.

(b) *Method of maintenance.* The records referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

(c) *Relation to other recordkeeping requirements.* Nothing in this section precludes compliance with any other applicable recordkeeping or reporting requirements, including, but not limited to, any recordkeeping requirements set forth in this chapter, and the DOL regulations at 29 CFR part 810.

■ 68. Add § 182.105 to subpart I to read as follows:

§ 182.105 Verification of automotive goods.

(a) *General.* CBP will initiate all verifications of automotive goods, including covered vehicles, pursuant to the means set forth in § 182.72(a) of this part. The general verification and determination provisions set forth in subpart G of this part and the provisions contained in this section are applicable for automotive good verifications.

(b) *Verification of a part, component, or material of a covered vehicle.* When conducting a verification of a covered vehicle imported into the United States, CBP may conduct a verification of the parts, components, or materials used in the production of that covered vehicle. This verification will be conducted in conjunction with DOL, if applicable. A verification of a part, component, or material producer may be conducted pursuant to any of the verification means set forth in § 182.72(a) of this part. With the exception of § 182.73(c) and § 182.75, the provisions in subpart G of this part apply to the verification of a part, component, or material, and, with the exception of paragraph (d)(1) of this section, the provisions in this section also apply to the verification of a part, component, or material. References to the term “producer” in this section apply to a producer of a covered vehicle or to a part, component, or material producer.

(c) *Availability of records*—(1) *Verification of a covered vehicle.* During a verification of a covered vehicle, the importer, exporter, and producer must make all records that they are required to maintain pursuant to this part, including §§ 182.103 and 182.104 of this subpart, and the DOL regulations at 29 CFR part 810, available for inspection by a CBP or DOL official conducting a verification. With respect to records related to vehicle certifications, an importer, whose claim is based on a certification of origin completed by the exporter or producer, must only make those records in the importer’s possession, as described in § 182.104, available for inspection by a CBP or DOL official conducting a verification. CBP may deny the claim for preferential tariff treatment of the covered vehicle for failure to maintain the records required by CBP or DOL or for denying a CBP or DOL official access to these records.

(2) *Verification of a part, component, or material of a covered vehicle.* During the verification of a part, component, or material used in the production of a covered vehicle, any records in the part, component, or material producer's possession related to whether the part, component, or material qualifies as originating must be made available for inspection by a CBP or DOL official conducting a verification. CBP may consider the part, component, or material that is used in the production of the covered vehicle and is the subject of the verification to be a non-originating part, component, or material if a CBP or DOL official is denied access to these records.

(d) *Verification of the high-wage components of the LVC requirement.* When conducting a verification of a covered vehicle involving the high-wage components of the LVC requirement, CBP will conduct the verification in conjunction with DOL. DOL is responsible, pursuant to 19 U.S.C. 4532(e) and the DOL requirements and procedures in 29 CFR part 810, for conducting the verification of the high-wage components of the LVC requirement and determining whether the covered vehicle meets the high-wage components of the LVC requirement. CBP is responsible for verifying all other aspects of the LVC requirement not covered by DOL, including the annual purchase value and cost components of the high-wage material and manufacturing expenditures, and is ultimately responsible for determining whether the covered vehicle meets the LVC requirement, the requirements in this part, and whether the covered vehicle qualifies for USMCA preferential treatment.

(1) *Producer notification.* When CBP initiates a verification of a covered vehicle and that verification involves determining whether the covered vehicle meets the LVC requirement, CBP will notify the producer of the covered vehicle, through one of the communication means specified in § 182.73(d)(2) of this part, that CBP has initiated a verification of the covered vehicle and advise whether DOL will verify the high-wage components of the LVC requirement, subject to the confidentiality provisions in § 182.2 of this part and the DOL's regulations at 29 CFR part 810.

(2) *Determinations of origin involving the LVC requirement.* When issuing a determination of origin pursuant to § 182.75 of this part, CBP will determine whether the covered vehicle meets the LVC requirement and qualifies for preferential tariff treatment based in

part on DOL's determination of whether the covered vehicle complied with the high-wage components of the LVC requirement and DOL's verification findings and analysis.

(e) *Protests.* An importer, exporter, or producer, who has the right to file a protest pursuant to § 174.12(a)(6) of this chapter, may protest a CBP determination of origin under part 174 of this chapter. When a protest involves DOL's analysis of the high-wage components of the LVC requirement, CBP will coordinate with DOL regarding the review of the protest and accelerated disposition of the protest will not be available pursuant to § 174.22 of this chapter. DOL is responsible, pursuant to 19 U.S.C. 4532(e)(6)(A), for conducting an administrative review of its initial analysis pursuant to DOL's regulations at 29 CFR part 810 and providing a determination containing the results of the administrative review to CBP. CBP will review and act on the protest pursuant to the procedures and requirements set forth in part 174 of this chapter.

■ 69. Add § 182.106 to subpart I to read as follows:

§ 182.106 Alternative staging regime.

(a) *General.* Pursuant to General Note 11(k)(viii), HTSUS, Appendix A to this part, and as may be further provided for in subchapter XXIII of chapter 99 of the HTSUS, a covered vehicle may be originating pursuant to an alternative staging regime. A covered vehicle is only eligible for USMCA preferential tariff treatment under an alternative staging regime provided that:

(1) Use of the alternative staging regime has been authorized by the Office of the U.S. Trade Representative (USTR);

(2) USTR has not made a determination that the producer of the covered vehicle failed to meet the requirements for use of an alternative staging regime under 19 U.S.C. 4532(d)(5);

(3) The alternative staging regime period is in effect;

(4) The terms of the alternative staging regime petition, as authorized by the USTR, are met; and

(5) The covered vehicle meets the requirements in this part, including the requirements in this subpart, unless the terms of the alternative staging regime specifically exempt the producer from these requirements or contain different requirements.

(b) *Verifications.* CBP will conduct a verification of a covered vehicle subject to an alternative staging regime pursuant to the same procedures that govern other covered vehicles as set forth in § 182.105 of this subpart.

(c) *Vehicle certifications for covered vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the LVC, steel purchasing, or aluminum purchasing requirement, or contain different requirements from sections 13 through 18 of Appendix A to this part, then the producer must submit to CBP a vehicle certification for that requirement that covers only those vehicles subject the alternative staging regime. In addition to meeting all other requirements set forth in §§ 182.95, 182.96, and 182.97 of this subpart, as applicable, with the exception of §§ 182.95(c)(11), 182.96(c)(7), and 182.97(c)(7), a producer's vehicle certification submitted pursuant to this paragraph must include the following additional information:

(1) A list of the vehicles covered by the alternative staging regime;

(2) A description of the applicable exemption or different requirements as provided under the alternative staging regime; and

(3) An authorized signature, date, and the following certifying statement: "I certify that, for the vehicles listed and over the relevant period indicated in this document, the producer has satisfied the requirements of the alternative staging regime as set out in General Note 11(k)(viii), HTSUS, section 19 of the Uniform Regulations regarding Rules of Origin, 19 CFR 182.106, and under the terms authorized by the Office of the U.S. Trade Representative (USTR). The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification."

■ 70. Add § 182.107 to subpart I to read as follows:

§ 182.107 Denial of preferential tariff treatment of covered vehicles.

CBP may deny any claim for preferential tariff treatment of any covered vehicle if:

(a) CBP determines that the good does not qualify for preferential tariff treatment due to a failure to meet the LVC, steel purchasing, or aluminum purchasing requirements set forth in General Note 11, HTSUS, Appendix A to this part, or §§ 182.93 and 182.94 of this subpart;

(b) The producer of the covered vehicle fails to submit the required LVC, steel purchasing, or aluminum purchasing certifications to CBP, pursuant to §§ 182.95, 182.96, and 182.97 of this subpart;

(c) CBP determines that an LVC, steel purchasing, or aluminum purchasing certification that forms the basis for a covered vehicle's eligibility for USMCA preferential tariff treatment is not properly filed pursuant to §§ 182.95, 182.96, and 182.97 of this subpart;

(d) CBP determines that an LVC, steel purchasing, or aluminum purchasing certification that forms the basis for a covered vehicle's eligibility for USMCA preferential tariff treatment is invalid after it was determined to be properly filed;

(e) The importer, exporter, or producer fails to maintain records of the vehicle certifications and supporting documents as required pursuant to §§ 182.103 and 182.104 of this subpart;

(f) The importer, exporter, or producer fails to provide a CBP or DOL official the records or documentation that are in its possession or required to be maintained pursuant to § 182.105(c) of this subpart; or

(g) CBP determines that any other reason to deny a claim for preferential tariff treatment as set forth in § 182.75(c)(2) of this part applies.

ROBERT F. ALTNEU,
Director, Regulations & Disclosure Law Division Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 128, 143

RIN 1685–AA02

TRADE AND NATIONAL SECURITY ACTIONS AND LOW-VALUE SHIPMENTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the U.S. Customs and Border Protection (CBP) regulations pertaining to the administrative exemption for certain low-value shipments not exceeding $800. Specifically, CBP proposes to make merchandise that is subject to specified trade or national security actions ineligible for this administrative exemption and to require that certain shipments claiming this exemption provide the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) classification of the merchandise.

DATES: Comments must be received by March 24, 2025.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2025–0003.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Comments must be submitted in English, or an English translation must be provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may also be found at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Mabelitini, Director, Intellectual Property Rights & E-Commerce Division, Office of Trade, U.S. Customs and Border Protection, 202–325–6915, *ecommerce@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking (NPRM). U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the NPRM, explain the reason for any recommended change, and include data, information, argument, or authority that supports such recommended change.

Regulatory Alternatives

This rulemaking proposes to make imported merchandise subject to certain trade or national security actions ineligible for the administrative exemption found in 19 U.S.C. 1321(a)(2)(C) and to require that certain shipments claiming this exemption provide the 10-digit

Harmonized Tariff Schedule of the United States (HTSUS) classification of the merchandise. However, in addition to comments on the above proposals, CBP is also requesting comments on whether these proposals should be extended to bona-fide gifts valued at $100 or less ($200, if the gift is from certain island possessions) sent from persons in foreign countries to persons in the United States and/or certain personal or household articles valued at $200 or less accompanying persons arriving in the United States pursuant to 19 U.S.C. 1321(a)(2)(A) and 19 U.S.C. 1321(a)(2)(B).

Moreover, given the unique nature of the international mail shipments in the postal environment as set forth in Section II.D below, CBP is specifically seeking public comments as to the effects of this proposed rulemaking on those shipments into the United States.

II. Background and Purpose

A. Administrative Exemption From Duties and Taxes

Section 321(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 901, Public Law 114–125, 130 Stat. 122 (Section 321), authorizes administrative exemptions from duty and tax imposed on or by reason of importation for three categories of imported articles, when the amount of revenue to be collected is disproportionate to the expense and inconvenience caused to the government. These categories include: bona-fide gifts valued at $100 or less ($200, if the gift is from certain island possessions) sent from persons in foreign countries to persons in the United States; certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and other imported articles when the value of the article is $800 or less.[1] These exemptions are subject to the condition that the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from duty cannot exceed the authorized amounts. Also, these exemptions are not to be granted if merchandise covered by a single order or contract is forwarded in separate lots to obtain the benefit of duty- and tax-free entry. Finally, these exemptions are also not to be granted in circumstances where regulations prescribe exceptions or limitations on eligibility for these exemptions. Pursuant to Section 321(b), such regulations may be prescribed whenever such action is consistent with the purpose of Section 321(a), or, when "necessary for any reason to protect the revenue or to prevent unlawful importa-

[1] 19 U.S.C. 1321(a)(2). Shipments entered under this exemption are also commonly referred to as "*de minimis*" shipments.

tions." All further references to "the administrative exemption" in this document will be to the administrative exemption found in 19 U.S.C. 1321(a)(2)(C), unless specified otherwise.

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures, unless specifically excepted. These procedures ensure the proper appraisement, valuation, and tariff classification of the merchandise for the purpose of collecting the lawful amount of duties owed, as well as compliance with all other laws and regulations administered and enforced by CBP. Different procedures are provided for the entry and clearance of merchandise depending upon the value of the merchandise. Shipments of merchandise valued at $2,500 or less and entered pursuant to 19 U.S.C. 1498(a)(1)(A) are referred to as "informal entries." Specifically, 19 U.S.C. 1498(a)(1)(A) authorizes the Secretary of the Treasury[2] to "prescribe rules and regulations for the declaration and entry of merchandise when the aggregate value of the shipment does not exceed an amount specified . . . by regulation, but not more than $2,500." Shipments that are eligible for the administrative exemptions at 19 U.S.C. 1321(a)(2) are a subset of the informal entries covered by 19 U.S.C. 1498(a)(1)(A). The statutory framework of 19 U.S.C. 1498 authorizes, in effect, a less formal entry process than under 19 U.S.C. 1484 (referred to as "formal entries"). As a result, informal entry procedures are less burdensome and complex than the formal entry procedures. These simplified procedures reduce the overall administrative burden on informal entry filers. The regulations pertaining to entry of merchandise claiming the exemptions in 19 U.S.C. 1321(a)(2) are found throughout various parts of title 19 of the Code of Federal Regulations (CFR). The informal entry procedures for low-value shipments claiming the administrative exemption under 19 U.S.C. 1321(a)(2)(C) are specifically found in Part 143, subpart C, which cross-reference other regulations establishing eligibility requirements. Pursuant to the current text of 19 CFR 143.23(j), such eligible merchandise must be entered by providing certain information on a bill of lading or a manifest listing each bill. However, the requirements for shipments imported by mail are found in 19 CFR part 145, and the requirements for shipments imported by express consignment operators and carriers are covered by 19 CFR part 128.[3]

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[2] In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions.

[3] The procedures for low-value shipments imported by mail are not implicated in this proposed rulemaking.

Over the last 10 years, the number of shipments entering the United States claiming the administrative exemption has increased significantly, from approximately 139 million a year to over one billion a year. This exponential increase in shipments claiming the administrative exemption creates challenges to CBP's effective enforcement of U.S. trade laws, health and safety requirements, intellectual property rights, and consumer protection rules. Low-value e-commerce shipments pose the same health, safety, and security risks as higher-value shipments. Transnational criminal organizations and other bad actors perceive low-value shipments as less likely to be interdicted because these types of shipments are not subject to the more extensive formal entry procedures. This has resulted in attempts to enter illicit goods, such as illicit fentanyl, into the country through these types of shipments. Of particular concern are the large volume of daily importations and the more limited data regarding low-value shipments which make it increasingly difficult for CBP to target and block illicit synthetic drugs such as fentanyl and synthetic drug raw materials and related manufacturing equipment from entering the country. These developments have also created challenges with respect to the enforcement of trade actions designed to address threats to national security, unreasonable or discriminatory trade practices, and injury to domestic industry caused by import surges. In response to the significant changes in the trade environment and supply chains, substantial increases in the volume of shipments, and advancements to CBP's technological capabilities, CBP is proposing two regulatory actions to modify the regulations governing the administrative exemption.[4]

First, on [DATE], CBP published an NPRM regarding the entry of certain low-value shipments eligible for the administrative exemption under Section 321(a)(2)(C). *See* 90 FR 3048 The NPRM, titled "Entry of Low-Value Shipments" (ELVS NPRM) proposed various amendments to the CBP regulations pertaining to the entry of low-value shipments.

The existing informal entry requirements for low-value shipments are less rigorous than those required for other entry types, and often do not provide sufficient information for CBP to accurately identify the merchandise in the shipment and the parties involved in its sale and purchase. Furthermore, novel and complex e-commerce business models have expanded the traditional array of parties involved in the import transaction. New or infrequent importers often possess less

[4] For a more detailed discussion of these challenges, please see the ELVS NPRM. 90 FR 3048.

familiarity with U.S. customs laws and regulations, which can lead to the attempted importation of non-compliant goods.

The ELVS NPRM proposed the creation of a new entry process for entering low-value shipments, referred to as the "enhanced entry process," which would allow CBP to target high-risk shipments more effectively. The enhanced entry process is set forth in the ELVS NPRM as proposed § 143.23(l) and would require the provision of the 10-digit HTSUS classification of the merchandise. The ELVS NPRM also proposed revisions to the current process for entering low-value shipments, referred to as the "basic entry process," to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry. The basic entry process is set forth in the ELVS NPRM as proposed § 143.23(k).

Second, this rulemaking proposes to prescribe exceptions to eligibility for the administrative exemption under Section 321(a)(2)(C). These exceptions, described in more detail below, are consistent with the purpose of Section 321(a), and necessary to protect the revenue and prevent unlawful importations. In addition, this rulemaking proposes to require a 10-digit HTSUS classification for shipments entered using the basic entry process claiming the administrative exemption under Section 321(a)(2)(C).

B. Specified Trade and National Security Actions

The President has statutory authority to impose tariffs and establish quotas (among other actions) to address threats to national security, and serious injury or threat thereof to domestic industry, while the U.S. Trade Representative has statutory authority to take action to address unreasonable or discriminatory acts, policies, or practices, subject to any direction by the President. This rulemaking focuses on actions taken under Section 232,[5] Section 201,[6] and Section 301[7] and will refer to these actions collectively as "specified trade or national security actions." Currently, merchandise provided for in any absolute or tariff-rate quota, whether the quota is open or closed, and merchandise subject to antidumping and countervailing duties are not eligible for the administrative exemption under Section 321(a)(2)(C).[8] However, merchandise subject to specified trade or na-

[5] Section 232 of the Trade Expansion Act of 1962, as amended (Section 232); 19 U.S.C. 1862, Public Law 87–794, 76 Stat. 872.

[6] Section 201 of the Trade Act of 1974 (Section 201); 19 U.S.C. 2251 *et seq.,* Public Law 93–618, 88 Stat.1978.

[7] Title III of the Trade Act of 1974 (Section 301); 19 U.S.C. 2411–2420, Public Law 93–618, 88 Stat.1978 (as amended).

[8] *See* 19 CFR 10.153(g) and 19 U.S.C. 1671h and 1673g.

tional security actions imposing an *ad valorem* tariff is currently eligible to claim this administrative exemption.

Section 232 authorizes the President to adjust the imports of an article and its derivatives, if the Secretary of Commerce finds that the article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.[9] For example, beginning in 2018, the President imposed *ad valorem* tariffs, absolute quotas, and tariff-rate quotas on steel mill articles and on aluminum articles from almost all countries, pursuant to this authority.[10]

Section 201 provides that, if the U.S. International Trade Commission determines that a good is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a good like or directly competitive with the imported good, then the President is authorized to take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition (*i.e.,* safeguards).[11] These actions include imposing temporary duties and other trade measures. For example, in 2018, the United States imposed an *ad valorem* tariff and tariff-rate quota on certain crystalline silicon photovoltaic cells, whether partially or fully assembled into other products, pursuant to this authority.[12]

Section 301 allows USTR to address, among others, unreasonable or discriminatory acts, policies, or practices that burden or restrict U.S. commerce. Actions may include suspending trade agreement concessions or imposing import restrictions, subject to the specific direction of the President, if USTR determines that a trading partner of the United States is violating trade agreement commitments or engaging in discriminatory or unreasonable practices that burden or restrict U.S. commerce.[13] For example, the United States has imposed an additional *ad valorem* tariff on many products from China because China employs a series of technology transfer-related acts,

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[9] 19 U.S.C. 1862.

[10] *See* 83 FR 11625 (March 15, 2018) and 83 FR 11619 (March 15, 2018), as amended. Effective February 8, 2022, the United States also imposed *ad valorem* tariffs on imports of aluminum derivative articles and steel derivative articles into the United States under section 232 of the Trade Expansion Act of 1962. *See* 85 FR 5281 (January 24, 2020), as amended.

[11] 19 U.S.C. 2251, *et seq.*

[12] *See, e.g.,* 83 FR 3541 (January 23, 2018). For additional information on actions taken under Section 201, please refer to *https://ustr.gov/issue-areas/enforcement/section-201-investigations* (last visited November 7, 2024).

[13] 19 U.S.C. 2411–2420.

policies, and practices that are unreasonable or discriminatory and burden or restrict U.S. commerce pursuant to this authority.[14]

Collectively, these trade or national security statutes empower the President, or USTR, in consultation with designated agencies, to enforce U.S. trade or national security objectives with respect to certain imported merchandise by, among other actions, imposing an *ad valorem* tariff in addition to the standard applicable duty rate.

C. Excepting Merchandise Subject to Specified Trade or National Security Actions From Eligibility for the Administrative Exemption

To uphold the objectives of the specified trade or national security actions discussed above, and consistent with the purpose of Section 321(a), to protect the revenue, and prevent unlawful importations, this rulemaking proposes to except merchandise subject to an *ad valorem* tariff imposed under Section 232, 201, or 301 from eligibility for the exemption under Section 321(a)(2)(C). The Secretary of the Treasury is authorized by 19 U.S.C. 1321(b) to prescribe such exceptions to any administrative exemption.

These specified trade or national security actions are meant to prevent specific harms such as the threat of certain imports to national security or domestic industries or to respond to discriminatory or unreasonable practices that restrict or burden U.S. commerce. Thus, any Government expense involved in the collection of these additional duties is outweighed by the fact that continuing to exempt these goods would undermine the statutory scheme for trade or national security actions generally and the effectiveness of specific actions that are currently in force. Further, creating this exception would ensure that administrative exemption eligibility for products covered by the specified trade or national security actions is consistent with treatment under other U.S. trade laws. For instance, products covered by antidumping or countervailing duty orders are

[14] *See, e.g.,* 83 FR 28710 (June 20, 2018). For additional information on actions taken under Section 301, please refer to: *https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions* (last visited November 7, 2024).

already excepted from eligibility for the administrative exemption under 19 U.S.C. 1321(a)(2)(C).[15]

Merchandise that would be ineligible to claim the administrative exemption under this rulemaking may continue to be entered under an appropriate formal or informal entry process to ensure collection of any applicable tariff. For purposes of ensuring merchandise subject to additional tariffs imposed pursuant to a specified trade or national security action is not accorded duty-free entry under Section 321(a)(2)(C), this rulemaking additionally proposes to require a 10-digit HTSUS classification for merchandise entered under the proposed "basic entry process" claiming an exemption under Section 321(a)(2)(C), in addition to the proposed requirement to provide the 10-digit HTSUS classification for merchandise entered under the "enhanced entry process" that was proposed in the ELVS NRPM. Provision of the 10-digit HTSUS classification at entry enables CBP to determine whether the merchandise is subject to *ad valorem* tariffs as a result of a specified trade or national security action, and therefore whether the merchandise is eligible for the administrative exemption.

The proposed exception applies to all merchandise identified in a specified trade or national security action imposing an *ad valorem* tariff, even if the merchandise is accorded an exclusion from the *ad valorem* tariff imposed by a specific action.[16] CBP's proposal does not affect exclusions for purposes of determining whether an *ad valorem* trade or national security action tariff is applicable at entry. Merchandise accorded an exclusion may continue to be entered under an appropriate formal or informal entry process without being subject to the *ad valorem* tariff, that would otherwise apply had the exclusion not been accorded, consistent with all applicable requirements. Products that are not subject to the *ad valorem* tariff imposed by a specified trade or national security action, as detailed in each action, remain eligible for the exemption under Section 321(a)(2)(C). For example, in recently issued Presidential Proclamation 10782, imports of aluminum from Mexico are not subject to the *ad valorem* tariff imposed pursuant to Section 232 if the article meets specified criteria.[17]

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[15] *See* 19 U.S.C. 1671h; 19 U.S.C. 1673g (requiring CBP to collect antidumping and countervailing duty deposits for "*all* entries, or withdrawals from warehouse, for consumption of merchandise subject to [an antidumping or countervailing duty] order") (emphasis added).

[16] CBP notes that merchandise subject to either an absolute or tariff-rate quota is already ineligible for the administrative exemption pursuant to 19 CFR 10.153(g). As a result, CBP is not discussing these quotas further in this NPRM.

[17] *See* 89 FR 57339 (July 10, 2024).

The proposal to make merchandise subject to specified trade or national security actions ineligible for the administrative exemption under Section 321(a)(2)(C) is consistent with the purpose of Section 321(a) and is necessary to protect the revenue. The rate of duty for merchandise subject to additional Section 232, 201 and 301 duties is higher than the rate applicable to merchandise subject to regular rates of duty (that is, most-favored-nation rates or rates under trade agreements or preference programs). Currently, the standard duty rate assessed on imported merchandise, on average, is less than 2 percent for goods subject to regular rates of duty. In comparison, the additional Section 301 *ad valorem* tariff rate assessed on certain goods from China currently ranges from 7.5 percent to 100 percent, the Section 201 tariff rate on certain solar cells is an additional 14.25 percent, and the Section 232 tariff rate is an additional 10 percent for aluminum and an additional 25 percent for steel mill articles.

As described in the Regulatory Flexibility Act section, when the standard duty rate is combined with the tariff rate applied to the aggregate value of imported merchandise subject to an *ad valorem* tariff under Section 232, 201 and 301, the total amount of additional revenue to be collected on merchandise subject to these trade or national security actions is projected to range between $5.9 billion and $7.8 billion in 2025. Considering the rates of duties and the aggregate trade volume of affected imports, CBP anticipates that the amount of additional revenue to be collected under the proposed exception would substantially outweigh the expense and inconvenience to the U.S. Government of collecting the duties. Thus, making goods subject to *ad valorem* tariffs pursuant to these trade or national security actions ineligible for the administrative exemption is consistent with the purpose of Section 321(a), because the amount of revenue to be collected on goods subject to *ad valorem* tariffs pursuant to these trade or national security actions is substantial enough to outweigh the expense and inconvenience to the government of processing the low-value shipments. Moreover, creating an exception for goods subject to *ad valorem* tariffs pursuant to these trade or national security actions protects the revenue because failing to collect these duties represents a substantial loss of revenue to the U.S. Government.

The above proposal also serves to prevent unlawful importations. As noted above, over the last 10 years, the number of shipments entering the United States claiming the administrative exemption has increased significantly, from approximately 139 million a year in 2015 to over one billion a year in 2024. Even though these shipments have a low value, this significant increase in volume makes it more challenging for CBP to conduct targeting for purposes of, among other things, identifying violations of U.S. trade laws, health and safety requirements, intellectual property rights, and consumer protection rules, and to block illicit synthetic drugs such as fentanyl and synthetic drug raw materials and related manufacturing equipment from entering the country. Such enforcement challenges put American consumers at risk. CBP anticipates that excepting merchandise subject to *ad valorem* tariffs pursuant to specified trade or national security actions from eligibility for the administrative exemption will result in a decrease in the overall volume of shipments claiming this exemption. CBP expects that shipments of ineligible merchandise will be consolidated into larger shipments and entered under an appropriate formal or informal entry process, resulting in decreased overall volume of shipments.

D. Unique Considerations for Applicability to the International Mail Shipments

While CBP has included international mail in the scope of this proposed rulemaking, CBP seeks public comments that address the operational feasibility in the international mail environment. The U.S. Postal Service (USPS) has committed to provide comments as part of the rulemaking record. This approach seeks to determine whether there are sufficient reasons why postal shipments can and should be treated differently, and those differences are best addressed as the rulemaking moves forward with input from the USPS and the public.

The reasons postal shipments may require a different approach in the proposed rulemaking include the following: (1) the USPS is subject to universal service obligations to deliver international mail and other constraints under both international agreements and domestic law, which create unique challenges to the application of the proposed rule to international mail; (2) international mail operates differently from other modes of global commerce, including that international postal shipments do not benefit from an end-to-end process as do commercial shipments; (3) the overwhelming majority of international mail consists of low-value shipments and the USPS typically cannot collect duties directly from the foreign mailers with whom it has no relationship; and (4) as a result of these operational considerations, the application of this proposed rulemaking may create substantial unrecoverable financial costs for the USPS, which would be inconsistent with the legal obligation of the USPS to operate in a financially self-sufficient manner.

Further, if CBP decides to exclude international mail from the scope of a final rule, the agency would intend to address the trade remedies and national security loophole for de minimis goods through additional rulemaking tailored to the unique operational and legal characteristics of the international mail environment.

III. Discussion of Proposed Amendments

This rulemaking proposes amendments to provisions found in 19 CFR parts 10, 128, and 143. Because CBP has also proposed amendments to the same provisions in the ELVS NPRM, the regulatory amendments proposed in this section are amendments of the regulations as proposed in the ELVS NPRM. See 90 FR 3048.[18]

CBP proposes an amendment to 19 CFR part 10 that would make merchandise subject to an *ad valorem* tariff under Sections 232, 201 and 301 ineligible for the exemption under Section 321(a)(2)(C). Part 10, among other things, implements in CBP regulations the statutorily authorized administrative exemption for low-value shipments, and lists the conditions that must be met to qualify for the exemption. Section 10.153 identifies exceptions to the administrative exemption. The ELVS NPRM proposes to amend § 10.153 by adding a new paragraph (i), which tracks the existing statutory exception to eligibility for merchandise subject to antidumping and countervailing duties. In this present notice of proposed rulemaking, CBP proposes to further amend this section to add an additional new paragraph (j), providing that imported merchandise subject to actions imposing additional duties pursuant to Section 232, Section 201, or Section 301 are also ineligible for the administrative exemption.

CBP additionally proposes amendments to 19 CFR parts 128 and 143, to require a 10-digit HTSUS classification for all merchandise entered under the proposed basic entry process as described in the ELVS NPRM. As a result of these proposed amendments, a 10-digit HTSUS classification would be required under both the proposed basic and enhanced entry process described in the ELVS NPRM. By requiring a 10-digit HTSUS classification for entries using either the proposed basic or enhanced process, CBP will have additional data needed to corroborate the product description that would also be required for all basic and enhanced entries. This HTSUS classification assists CBP in determining eligibility for the administrative exemption, including whether merchandise is subject to specified trade or national security actions, as well as assisting with administration and enforcement more generally. Therefore, CBP is proposing

[18] CBP will take into account all public comments on the ELVS NPRM and will adjust this rulemaking's language as appropriate.

to amend 19 CFR part 128, by adding this classification requirement to § 128.21(a)(4)(ii), as proposed in the ELVS NPRM, and part 143, by adding this requirement to § 143.23(k), as proposed in the ELVS NPRM.

Part 128, subpart C, sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers, including couriers, under special procedures. Current § 128.21(a) lists the manifest information required in advance of the arrival of all express consignment cargo. The ELVS NPRM proposed to amend § 128.21(a)(4)(ii) to explain that the HTSUS subheading number would not be required for low-value shipments entered under the basic entry process in § 143.23(k). However, given that this notice of proposed rulemaking now proposes to extend this HTSUS subheading number reporting requirement to the basic entry process, CBP now proposes to amend § 128.21(a)(4)(ii) to make clear that the HTSUS subheading number is required for shipments claiming the administrative exemption entered under either the basic entry process, as proposed in § 143.23(k) of the ELVS NPRM, or the enhanced entry process, as proposed in § 143.23(l) of the ELVS NPRM.

Part 143, subpart C, sets forth the requirements for the clearance of imported merchandise under informal entry procedures. In the ELVS NPRM, CBP proposed to amend the current release from manifest process described in current § 143.23(j) and (k). The ELVS NPRM consolidates the general requirements for the basic entry process in proposed § 143.23(k). CBP is proposing to further amend paragraph (k) by adding the 10-digit HTSUS classification as a required data element that must be provided for all shipments entered using the basic or enhanced entry processes proposed in the ELVS NPRM.

IV. Statutory and Regulatory Reviews

A. Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This rule is a "significant regulatory action" that is economically significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, because the rule would have an annual effect of $200 million or more during at least one year of the analysis. A regulatory impact analysis (RIA), entitled Trade and National Security Actions and Low-Value Shipments (TraNSALS) Regulatory Analysis and Regulatory Flexibility Analysis, has been included in the docket of this rulemaking USCBP–2025–0003. The following presents a summary of the aforementioned regulatory impact analysis. Although this analysis attempts to mirror the terms and wording of the rule, no attempt is made to precisely replicate the regulatory language and readers are cautioned that the actual finalized regulatory text, not the text of this assessment, is binding.

1. Purpose of the Rule

This proposed rule makes merchandise subject to an *ad valorem* tariff pursuant to a trade or national security action under Section 232, 201, or 301 ineligible for the administrative exemption in 19 U.S.C. 1321(a)(2)(C). The administrative exemption allows shipments of merchandise to be imported by one person on one day to pass free of duty and tax imposed on or by reason of importation if the aggregate fair retail value in the country of shipment does not exceed $800, and the shipment is not covered by a single order or contract but sent in a separate lot to secure duty-free treatment. Throughout this analysis, we refer to low-value shipments that qualify for the administrative exemption in 19 U.S.C. 1321(a)(2)(C) as "qualifying low-value shipments." For fiscal year 2023, CBP estimates that hundreds of thousands of qualifying low-value shipments would have been assessed additional tariffs owed under Section 232, 201, or 301, had they not claimed the administrative exemption. By allowing these low-value shipments to be imported without assessment of the additional duties owed pursuant to an applicable trade or national security action, the administrative exemption is undermining the United States' trade and national security actions. Additionally, low-value shipment volumes have grown rapidly in recent years, rising from approximately 139 million to over 1 billion shipments per year between fiscal years 2015 and 2023.[19] This overwhelming volume has created operational inefficiencies for CBP's inspection of low-value shipments for compliance with U.S. laws and regulations. CBP anticipates that this rulemaking would increase tariff revenue, reduce the volume of qualifying low-value shipments, improve effectiveness

[19] Data pulled from CBP's Automated Targeting System (ATS) database.

of specified trade and national security actions, and thereby increase the efficiency with which CBP targets imports for security risks.

2. Need for the Proposed Rule

The Trade Expansion Act of 1962 and the Trade Act of 1974 authorize the President and USTR to impose tariffs in certain circumstances. Specifically, as relevant to this proposed rulemaking, Section 232 of the Trade Expansion Act of 1962 authorizes the President to adjust imports of an article and its derivatives if the Secretary of Commerce finds that the article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security. Section 201 of the Trade Act of 1974 authorizes the President to impose temporary trade measures if the International Trade Commission finds that an article is being imported in such increased quantities as to be a "substantial cause of serious injury or the threat thereof" to U.S. industries. Lastly, Section 301 of the Trade Act of 1974 authorizes USTR, subject to the direction of the President, if any, to impose import restrictions to address, among other things, unreasonable or discriminatory acts, policies, or practices that burden or restrict U.S. commerce. This proposed rulemaking refers to tariffs imposed under Section 232, 201, or 301 as "specified trade or national security actions."

These specified trade or national security actions are designed to protect domestic industries, and to address the harm to domestic industry and the American public from substantial cause of serious injury or threat thereof from surges of injurious imports and unreasonable or discriminatory trade practices, and may in turn encourage foreign governments to eliminate policies that gave rise to the action, or to address the threatened impairment of U.S. national security caused by certain imports. However, some merchandise subject to specified trade or national security actions may also be eligible for the administrative exemption pursuant to Section 321 of the Trade Act of 1930, as amended (19 U.S.C. 1321(a)(2)). Section 321 provides administrative exemptions from duty and taxes that are imposed upon or by reason of importation for three categories of imported articles:

- Certain bona-fide gifts valued at $100 or less ($200, if the gift was from certain island possessions) sent from persons in foreign countries to persons in the United States;
- Certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and
- All other imported articles when the aggregate fair retail value of the articles in the country of shipment is $800 or less.

This proposed rulemaking only concerns shipments in the third category, which is covered by the administrative exemption in 19

U.S.C. 1321(a)(2)(C). To avoid confusion with the other two administrative exemptions, we will refer to this exemption alone as the "administrative exemption." Specifically, the administrative exemption allows a shipment to be imported duty-free when the aggregate fair retail value in the country of shipment of all articles imported by one person on the same day and exempted from the payment of duty is less than or equal to $800. This administrative exemption was originally set at $1 in the Customs Administrative Act of 1938 to limit the "expense and inconvenience" of collecting duty when it was a disproportionate amount of work by the U.S. Government compared to the amount of revenue that would be collected. Since its inception, Congress has increased the daily aggregate value cap to $5 in 1978, $200 in 1993, and $800 in 2016. In recent years, the volume of imports subject to *ad valorem* tariffs as a result of specified trade or national security actions under Sections 232, 201, and 301 has increased, but low-value shipments qualifying for the administrative exemption are permitted to enter duty-free, even when subject to additional duties pursuant to these actions. Thus, the administrative exemption dampens the impact of specified trade or national security actions by allowing low-value imports that claim the exemption to legally avoid all duties and taxes imposed upon or by reason of importation that would otherwise be collected, including the additional duties collected under specified trade and national security actions. In fiscal year 2023, an estimated 77 percent of shipments claiming the administrative exemption would have been assessed additional duties under Section 232, 201, or 301 had they not claimed the administrative exemption.[20]

Additionally, low-value shipments create operational inefficiencies for CBP's ability to inspect these goods due to their high volumes and more limited data requirements. The volume of shipments claiming the administrative exemption has risen sharply from approximately 139 million in fiscal year 2015 (prior to the increase in the daily aggregate exempted value cap) to 1 billion shipments per year in fiscal year 2023.[21] In 2019, CBP implemented the Entry Type 86 Test (84 FR 40079; subsequently amended in 89 FR 2630), which created a new electronic process for filing entries of qualifying low-value shipments in the Automated Commercial Environment (ACE), as a voluntary alternative to the current regulatory "release from mani-

[20] Our estimate is based on a random sample of 6,238,513 ET86 entries from fiscal year 2023, pulled from CBP's ACE database. We assume that qualifying low-value shipments cleared off the manifest are as likely as type 86 entries (a test which created a new electronic informal entry process for filing qualifying low-value shipments in ACE (84 FR 40079)) to be covered by additional Section 232, 201, or 301 tariffs.

[21] Data pulled from CBP's Automated Targeting System (ATS) database.

fest" process under parts 128 and 143 of the CBP regulations. Under this test, an owner, purchaser, or customs broker appointed by an owner, purchaser, or consignee may file an entry type 86 through ACE for shipments claiming the administrative exemption. Ten data elements are required to be transmitted to CBP as part of the entry, including the 10-digit HTSUS classification for the imported merchandise. The Entry Type 86 Test facilitates the clearance of compliant low-value shipments into the United States through the filing of an electronic entry in ACE, to include the submission of partner government agency (PGA) data, which expedites release. While Entry Type 86 has sped up processing for many shipments claiming the administrative exemption, the remaining shipments entered under the current regulatory "release from manifest" process[22] may require manual clearance and provide CBP with more limited data. CBP anticipates that this rulemaking would reduce the volume of shipments claiming the administrative exemption and thereby increase the efficiency with which CBP targets imports for security risks, including curbing the smuggling of illegal opioids such as heroin and fentanyl, by shifting some shipments to other entry types that require more data and the use of an authorized broker.

3. Summary of Proposed Rule

In this proposed rule, CBP proposes to make all goods subject to trade or national security actions under Sections 232, 201, and 301 ineligible for the administrative exemption. As a result, importers of such goods would have to pay both the standard duties and any additional duties imposed pursuant to trade and national security actions under Sections 232, 201, and 301, even when the entry value is under $800; shipments containing such goods would instead need to be entered through an alternative entry type. CBP assumes that filers will use entry type 11 (another informal entry type) or entry type 01 (a formal entry type), depending on the value of the merchandise.[23] To enable CBP to determine whether merchandise is eligible for the administrative exemption, CBP proposes to collect the 10-digit HTSUS classification as part of the basic as well as the enhanced processes, as described in the ELVS NPRM. This is a proposed modification of the ELVS NPRM, which did not propose to require the

[22] The "release from manifest" process describes shipments claiming an exemption under 19 U.S.C. 1321(a)(2)(C) which are released from CBP custody based on the information provided on the manifest or bill of lading, 19 CFR 128.24(e) and 143.23(j)(3)– (k). *See* 84 FR 40079, 40080 (Aug. 13, 2019); 89 FR 2630, 2631 (Jan. 16, 2024).

[23] While other entry types are available, they comprise a minor portion of total entries. Because type 01 and 11 entries are most common, we assume these are the most likely types that will be employed for shipments that no longer qualify for the administrative exemption.

10-digit HTSUS classification as part of the data required for entry under the basic entry process.[24] In the ELVS NPRM, CBP proposed to only require the 10-digit HTSUS classification of the merchandise to be provided as part of the enhanced entry process (subject to waiver in certain circumstances subject to specified conditions).[25] This Trade and National Security Actions and Low-Value Shipments NPRM would expand that HTSUS classification reporting requirement to include shipments claiming the administrative exemption under the basic entry process.

The proposed rule would strengthen the United States' specified trade and national security actions, especially for Section 301 tariffs. For example, the goal of the current Section 301 action is to discourage China's acts, policies, and practices related to technology transfer, intellectual property, and innovation that burden or restrict U.S. commerce. Additionally, the specified trade or national security actions can be used to protect domestic industries from serious injury, or the threat thereof, by import surges or adjust imports that threaten to impair the national security. Moreover, enforcement of U.S. trade laws and US trading rights protects domestic industries and workers from unfairly traded imports. An industry that is particularly vulnerable to circumvention by qualifying low-value shipments from China is the U.S. textile and apparel manufacturing industry. A large volume of Chinese textile and apparel imports claim the administrative exemption, thereby avoiding tariffs. Further, approximately 50 percent of the value of current qualifying low-value shipments is attributed to textiles and apparel that would otherwise be subject to additional duties under Section 301. Broadly speaking, an estimated 15.9 percent of total imports covered by Section 232, 201, and 301 tariffs are exempt from the tariffs as a result of claiming the administrative exemption.[26] By excepting imported goods that are subject to additional duties imposed under Section 232, 201, and 301 actions from the administrative exemption under 19 U.S.C. 1321(a)(2)(C), CBP would increase the effectiveness of these specified trade or national security actions. This proposed rule would further help protect do-

[24] The "basic entry process," as described in the ELVS NPRM is largely the same as what is known as the "release from manifest" process currently in use but with minor changes to certain data elements. Detailed information about those proposed data element changes can be found in the Entry of Low-Value Shipment NPRM.

[25] The proposed ELVS rule would allow entry filers to apply for a waiver privilege (*i.e.,* a "waiver") from the requirement to transmit the HTSUS as part of an enhanced entry for non-PGA related goods. To obtain a waiver, the filers meet several criteria generally demonstrating their ability to properly classify merchandise, determine whether the merchandise is subject to the requirements of partner government agencies (PGAs), or otherwise precluded by law from eligibility for the administrative exemption.

[26] See Chapter 5 of standalone RIA for sources and estimation method.

mestic industries and discourage unreasonable or discriminatory practices, among other things, by other countries.

This rule would also increase CBP's inspection efficiency by shifting a large volume of shipments that would become ineligible to claim the administrative exemption into alternative entry types, such as formal type 01 and informal type 11 entries. Low-value shipments claiming the administrative exemption are currently more challenging for CBP to efficiently inspect than other entry types because they arrive with more limited data. As a result, CBP officers must do more work to ensure that a low-value shipment is admissible and to determine whether the shipment is eligible for the administrative exemption, which is often impossible without physical inspection of the shipment. Shipments entered using type 01 or 11 entries, in contrast, arrive with more detailed information about the contents of the goods included in the shipment, increasing CBP's inspection efficiencies.

Furthermore, shifting shipments that will become ineligible for the administrative exemption to an alternative entry type, such as type 01 formal or type 11 informal entry, is likely to result in the consolidation of multiple, similar items into a single shipment.[27] Specifically, the $800 daily aggregate value limit for shipments claiming the administrative exemption incentivizes importers to de-consolidate goods into numerous low-value shipments to avoid paying tariffs. Absent the ability to avoid tariffs, importers are likely to be incentivized to reduce per-unit shipping costs by consolidating items in bulk shipments.[28] This consolidation results in fewer, higher value entries, where multiple identical items can be reviewed by CBP officers at the same time. Consolidation of non-identical items is also possible and could result in savings if they are from the same shipper or origin or have other similar characteristics. However, for the purposes of this

[27] We acknowledge that consolidation may not be possible for all qualifying low-value shipments. For a discussion of which shipments might be consolidated see Exhibit 3–5 of the standalone RIA.

[28] For example, imagine a retailer sells 10,000 identical shirts manufactured in China via an eCommerce platform, and each shirt has a value of $10. Packaging each shirt individually at a factory or distribution center in China for direct delivery to the final consumer in the United States allows filers to claim the administrative exemption on behalf of the final consignee (*i.e.,* the consumer). Absent this administrative exemption, the retailer must pay the tariff based on the value of each shirt as well as a filing fee for each individual shipment. If the retailer chooses instead to ship all 10,000 shirts as a single line item in a bulk shipment to an existing distribution center in the United States, the total tariff payment is the same, but the filing fee is orders of magnitude smaller because it is only paid once (rather than 10,000 times). The shirts can then be packaged in the United States for individual delivery to the final customer. Retailers will make strategic decisions about how to import goods affected by this rule based on a variety of factors including filing fees; the relative costs of using foreign or domestic distribution centers; the costs in terms of money and time associated with slower, lower-priced ocean freight (bulk containers) versus faster, higher-priced air freight (individual packets); inventory management costs; etc.

analysis, we focus on the consolidation of similar or identical goods, because that is where there are the clearest savings for both trade members and CBP.

Finally, the proposed rule is likely to improve CBP's ability to accurately identify the contents of a shipment claiming the administrative exemption even if it does not contain goods subject to an *ad valorem* tariff as a result of a trade or national security action under Section 232, 201, or 301. Many of these goods currently use the "release from manifest" entry process, and absent this rule, would use the basic entry process if the ELVS NPRM is finalized. The "release from manifest" process (or its proposed modification into the "basic entry process" as described in the ELVS NPRM) is less costly for importers, because less information is submitted to CBP, but the release of shipments by CBP is slower, averaging 3 days.[29] In contrast, shipments using type 01 or 11 entries, or the current Entry Type 86 Test (or its proposed modification into the "enhanced entry process" as described in the ELVS NPRM), are typically released by CBP within 1 day. This proposed rule would require a 10-digit HTSUS classification under both the basic and enhanced entry process. As a result, importers will likely opt for enhanced entry, with its faster clearance times, given that the difference in administrative costs between the basic and enhanced entry processes will become negligible. Having the HTSUS classification along with several additional data elements required for enhanced entry under the ELVS NPRM will improve CBP's targeting abilities.[30]

4. Proposed Rule Benefits, Costs and Transfers

Analytic Baseline

This analysis estimates the benefits, costs, and transfers anticipated for a 10-year period beginning in 2025, the expected year of rule implementation. Estimating these effects requires defining and modeling a baseline scenario that reflects the world without the proposed regulation. By comparing the baseline, or "world without the regulation," to the "world with the regulation," analysts can characterize the incremental effects of the regulation. The baseline scenario is

[29] See the ELVS Regulatory Analysis supporting the NPRM.

[30] ELVS proposes to require a CTIN, the country of shipment of the merchandise, the 10-digit HTSUS for all enhanced entries. ELVS also proposes to require enhanced entries to include a URL, product picture, product identifier, and/or a shipment x-ray or other security screening report number verifying completion of foreign security scanning of the shipment. The seller name and address, purchaser name and address, any data or documents required by other government agencies, advertised retail product description, and marketplace name and website or phone number are proposed to be required for enhanced entries as they are applicable.

forward-looking, in that it projects what the world would look like, in the future, absent the new regulation. We make three key assumptions related to the baseline scenario:

• *Shipment modes and entry types:* We assume that in the future, absent this proposed rule, shipments would continue to be entered into the United States in the same proportions (by shipment mode and entry type) as in 2023. These entries are predominantly commercial non-express type 86 entries (58 percent), followed by manifest express entries (17 percent), manifest commercial non-express (16 percent), postal (8 percent), and express type 86 entries (1 percent).

• *Low-value shipment growth:* We assume the total value of qualifying low-value shipments in 2026 through 2034 grows at the rate of projected GDP growth over the same period. We note that this assumption is highly uncertain. Since 2016, when Congress increased the administrative exemption limit to $800, the volume of qualifying low-value shipments has increased exponentially, with shipments from China the primary contributor to this growth. We assess the sensitivity of our results to alternative growth assumptions.

• *Entry of Low-Value Shipments (ELVS) Rule:* CBP has published a Notice of Proposed Rulemaking proposing the ELVS rule, which would replace the existing Entry Type 86 Test with a new entry process (“enhanced entry”) providing expedited clearance for qualifying low-value shipments. For the purposes of this analysis, we assume that the final ELVS rule will be published and implemented in advance of the Trade and National Security Action final rule. If it is not, this analysis will be revised as necessary in the final rule.

Incremental Costs and Transfers

We model costs and transfers from the proposed rule using a partial equilibrium analysis for industry-level qualifying low-value imports from 2025 to 2034. The primary costs of the proposed rule are consumer surplus losses resulting from increased duties and possibly increased processing fees, resulting in higher prices for imported goods paid by U.S. consumers on imported goods.[31] [32] Under the proposed rule, importers are required to pay tariffs on all goods subject to an *ad valorem* tariff pursuant to Section 232, 201, or 301, and some shipments are subject to additional fees. Our analysis focuses only on goods that would be subject to Section 301 tariffs absent the administrative exemption. Data shows that 0.1 percent of

[31] Consumer surplus is an economic measure of welfare that reflects the difference between what a consumer is willing to pay and what the consumer paid for a product.

[32] In this analysis, we assume the prices experienced by consumers include tariffs and processing fees paid by manufacturers or retailers selling the goods and arranging for their importation and delivery.

goods (by value) that entered using ET86 in FY 2023 had HTSUS codes subject to Section 232 or 201 tariffs. The resulting price increases lead to higher equilibrium dutyinclusive prices and reduced imported quantities, leading to a decline in consumer surplus, a measure of welfare that reflects the difference between what a consumer is willing to pay and what the consumer paid for a product.

An important component of consumer surplus loss is the transfer of tariff revenue to the government. Although consumers face higher prices for imported goods, the U.S. government generates tariff revenue on goods that were previously avoiding tariffs by claiming the administrative exemption. The net effect of consumer surplus losses and gain in government tariff revenues is the resulting welfare change under the proposed rule.[33]

Cost Shocks

To model the impact of the proposed rule, we introduce cost shocks comprised of two components: (1) a tariff that will apply to certain goods currently claiming the administrative exemption; and (2) additional fees associated with services provided by licensed customs brokers and CBP staff to process low-value shipments, regardless of whether the shipments remain in the 19 U.S.C. 1321(a)(2)(C) exemption environment or shift to formal type 01 or informal type 11 entry. The tariffs apply on an *ad valorem* basis to affected goods, regardless of whether these goods are shipped individually or as part of larger, consolidated shipments. The weighted average tariff rate for affected low-value shipments across all industries included in the analysis is 21.2 percent. Table 1 presents the weighted average tariff rate by industry for affected low-value shipments.

Table 1—Weighted Average Section 301 And MFN Tariff Rates By 3-Digit NAICS Code

NAICS code	NAICS description	Weighted average tariff rate (%)
11	Agriculture, Forestry, Fishing and Hunting	21.8
211	Oil and Gas Extraction	25.0
212	Mining (except Oil and Gas)	25.0

[33] We note that this analysis focuses primarily on the overall societal effect of the proposed rule. It does not quantify the potential distributional effects associated with the incidence of the increased prices for affected goods and the incidence of revenue gains associated with the collection of tariff revenue; however, it describes the potential distributional effects of increased prices qualitatively in Section 3.4 and Appendix A. Forecasting how the tariff revenue may be returned to the U.S. population (*e.g.*, through tax cuts or other policy options) is beyond the scope of this effort. If tax cuts are selected, additional distributional distortions are possible.

NAICS code	NAICS description	Weighted average tariff rate (%)
311–312	Food, Beverage and Tobacco Product Manufacturing	12.2
313	Textile Mills	31.2
314	Textile Product Mills	31.0
315	Apparel Manufacturing	21.0
316	Leather and Allied Product Manufacturing	28.3
321–323	Wood, Paper, Printing	21.2
324	Petroleum and Coal Products Manufacturing	26.8
325–326	Chemical, Plastics, Rubber Products Manufacturing	17.8
327	Nonmetallic Mineral Product Manufacturing	23.9
331	Primary Metal Manufacturing	23.1
332	Fabricated Metal Product Manufacturing	25.5
333	Machinery Manufacturing	24.9
334	Computer and Electronic Product Manufacturing	21.0
335	Electrical Equipment, Appliance, and Component Manufacturing	26.4
336	Transportation Equipment Manufacturing	22.8
337–339	Furniture and Miscellaneous Manufacturing	14.1
All Industries		21.2

Source: Data provided by the International Trade Administration (ITA) via email on October 11, 2024.

In contrast to tariff payments, fees are assessed on a per-shipment basis, and thus vary significantly depending on assumptions about the degree to which items are bundled together in larger, consolidated shipments. These fees include: (1) payments to brokers to file and process entries; and (2) the merchandise processing fee (MPF) paid to CBP on all type 01 and 11 entries.[34] Table 2 presents the fees charged by brokers (working with carriers) to file and process entries. Our estimate for the cost of processing an international shipment in the postal environment is $8.55. We do not include the $7.20 dutiable mail fee charged by CBP, which is required when CBP personnel must complete the paperwork for postal shipments themselves, as it is not clear how often CBP personnel would be the ones completing the paperwork. CBP is requesting public comment on the expected costs of processing a shipment in the postal environment, including how often the dutiable mail fee is expected to apply.

[34] Conversations with brokers suggest the MPF for higher-value bulk shipments will be negligible. Therefore, we do not consider the MPF fees explicitly in the analysis.

TABLE 2—PER SHIPMENT FEES

Type	Fee ($/shipment)
Broker fee: [1]	
Non-express commercial carrier [2]	$1.00
Express commercial carrier [3]	30.00
Postal carrier [3]	8.55
Merchandise Processing Fee (MPF): [4]	
All	2.53

Sources and assumptions:
[1] A licensed broker is not currently required for the "release from manifest" entry process, nor would the ELVS NPRM require one for the basic entry process if the ELVS NPRM is finalizes as proposed. We assume for purposes of this analysis that a broker fee is charged for any entry requiring an HTSUS code and is similar regardless of whether the filer uses enhanced entry, entry type 86, 01, or 11. (Source: Personal communication with representatives of a major broker association on 9/26/2024.)
[2] Email from CBP dated 10/11/2024.
[3] Fajgelbaum and Khandelwal (2024).
[4] Minimum merchandise processing fee for informal entries as of October 1, 2023. (As viewed on 10/11/2024 on *https://www.federalregister.gov/documents/2023/07/28/2023–16197/cobra-fees-to-be-adjusted-for-inflation-in-fiscal-year-2024-cbp-dec-23–08.*)

We highlight that these fees are a significant additional cost for many qualifying low-value shipments relative to the overall value of these goods. For example, roughly one-fifth (18.5 percent) of qualifying low-value shipments have a declared value of $5 or less and the majority of these shipments (61.5 percent) have a declared value of $25 or less. Examination of the magnitude of fees relative to the value of shipments currently claiming the administrative exemption, coupled with discussions with representatives of the customs broker and logistics community, suggest that shipment consolidation is a likely outcome of the proposed rule (see chapter 3 in the RIA available in the docket of this rulemaking for additional detail). We evaluate the uncertainty associated with an assumption about the likelihood of consolidation by modeling two separate scenarios, summarized below:

• *Low impact scenario.* We assume that in order to mitigate additional fees, similar or identical Section 301 goods are consolidated into larger, bulk shipments, which would be entered using either entry type 01 or entry type 11 and would be comprised of multiple pieces of identical items.[35] As a result, the only increase in price experienced by consumers of goods subject to Section 301 duties is the

[35] As noted earlier, we acknowledge that consolidation may not be possible for all qualifying low-value shipments. Thus, this scenario more likely represents a lower-bound estimate of the impacts of the proposed rule.

duty because all fees are assumed to be fully mitigated.[36] Certain shipments without Section 301 goods are also affected because they must provide an HTSUS code where none was required previously. Non-Section-301 shipments in the express environment using the basic entry process are consolidated to mitigate the fees paid to the broker for filing the entry with the HTSUS (*i.e.,* similar to Section 301 goods, fees are assumed to be negligible, or $0). For express shipments that would use enhanced entry, and therefore already provide HTSUS codes, no change in entry mode occurs. Similarly, because this rule does not require an HTSUS code for postal shipments, postal shipments without Section 301 goods are also unaffected.

• *High impact scenario.* In this scenario, we assume less consolidation occurs. Shipments without Section 301 goods remain qualifying low-value shipments and pay a fee to a customs broker to file the entry with the HTSUS code. The fee ranges from $1 to $30 per shipment, depending on the carrier. Because the affected parties are hiring a broker to file the entry and assign an HTSUS code, they file an enhanced entry, rather than a basic entry.[37] For shipments with Section 301 goods, we assume that the typical business relationship between non-express carriers and their clients supports consolidation of like items as a means of mitigating fees, which would result in these shipments being entered either using entry type 01 or entry type 11 (*i.e.,* net fees, when combined with the potential savings in shipping costs associated with consolidation, are assumed to be negligible, or close to $0). However, we assume Section 301 shipments transported by express carriers and the postal service remain unconsolidated and apply associated per shipment fees (*i.e.,* broker/filing fees range from $8.55 to $30 per shipment, depending on the carrier, plus a MPF of $2.53 per shipment).

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[36] As discussed in detail in Section 3.3.2 of the standalone RIA, given the high cost of broker fees and MPF relative to the value of items included in qualifying low-value shipments, it is likely that retailers will strategically consolidate shipments in order to negate the impact of these fees. Thus, this low impact scenario considers only the impact of newly applicable tariffs. The impact of additional broker fees and MPF is considered in the high impact scenario.

[37] In this high impact scenario, some shipments are likely to remain as low value shipments and should therefore see faster clearance times resulting from the use of a different filing process. However, as discussed earlier and in Chapter 3 of the standalone RIA, in both the low and high impact scenarios, we anticipate substantial consolidation of individual items in larger, bulk shipments, where they will be sent to U.S. facilities for storage, packaging, and distribution. These items will likely travel by ship, rather than plane, so while they will be cleared through customs more quickly, they will take longer to travel from the foreign port to their U.S. destination (this time cost is offset by substantially lower freight costs associated with ocean freight). On balance, considering all affected shipments, it is difficult to say whether net time savings will occur. For this reason, we do not explicitly quantify potential time-savings or time costs in this analysis.

Results

Results from the partial equilibrium analysis are as follows:

1. *Consumer surplus losses* in 2025 range from $10.0 billion (low scenario) to $18.2 billion (high scenario). These losses are largely explained by higher import prices faced by consumers. In both scenarios, tariffs raise the price of low-value shipments for the consumer. In the high scenario, these price increases are heightened due to broker fees and MPF applicable to many shipments. In addition, consumers experience a welfare loss associated with a reduction in import quantities resulting from these price increases.

2. *Tariff revenues increase* in all years relative to the baseline. In 2025, $7.8 billion in tariff revenues are generated in the low scenario, compared with $5.9 billion in the high scenario. Because tariff revenues depend on the value of imported goods, the high scenario generates less revenue as consumer demand falls in response to the additional fees on many shipments.

3. The proposed rule results in *net decreases in welfare* in the low scenario (–$2.2 billion in 2025) and high scenario ($–12.3 billion in 2025).[38] For the 10 years following rule implementation, the present value of these welfare effects is a loss of $21.9 billion in the low scenario and $121.9 billion in the high scenario (assuming a 2 percent real discount rate).[39] The greater impacts in the high scenario result from the additional costs imposed on imported goods in the form of broker fees and merchandise processing fees.[40]

4. *Tariff pass-through*—the rate at which increased tariffs are passed on to consumers through higher prices—is a key parameter that influences all three partial equilibrium outputs presented in this report: consumer surplus, tariff revenues, and net welfare effects. Consistent with recent economic evidence on tariff pass-through, we assume full tariff pass-through to U.S. consumers in our main

[38] As discussed in Point #7, these losses are likely to be regressive in nature, disproportionately affecting low-income and minority consumers.

[39] OMB Circular No. A–4 (2023) requires agencies to estimate the present value and annualized impacts of a proposed rule by applying a 2 percent real discount rate.

[40] We note that our estimate of the net effect of changes in consumer surplus and tariff revenue does not explicitly measure potential changes in producer surplus. The direction and magnitude of bias introduced to the net welfare estimate is uncertain. Please see Section 3.1 for additional discussion.

estimates.[41] That is, consumers bear the full cost of increased tariffs as foreign suppliers do not adjust their supply prices. Given uncertainty in the rate of tariff pass-through, we calculated the "break-even" points where the net welfare effects are $0.[42] In the low scenario, pass-through rates greater than 79 percent (including the 100 percent pass-through assumed in our main estimates) result in net welfare losses; lower pass-through rates would result in net welfare gains. In the high scenario, this break-even point is roughly 35 percent. In other words, if foreign producers reduce their prices by an amount equal to 21 percent of the tariff increase in the low scenario,

[41] The historical evidence on tariff pass-through (and the related phenomenon of exchange rate pass-through) has suggested that the benefits from reduced tariffs are only partially passed through to consumers (*i.e.,* foreign suppliers increase their prices in response to the tariff cut). More recent evidence focuses on the effect of the sharp increases in tariffs, primarily hitting Chinese imports, in 2018 to 2019. In this episode, the estimated effects are very different. Fajgelbaum et al. (2020) finds complete pass-through of tariffs to import prices using product-level monthly import and export data from the U.S. Census Bureau, *i.e.,* foreign supplier did not reduce their prices in response to the tariffs. These results are supported by more recent analyses by Chang et al. (2021) and Ma et al. (2021) (as cited in Fajgelbaum and Khandelwal 2021) and Amiti et al. (2020). These studies focus on the price of imported goods at the entry port. Cavallo et al. (2019) employs data from product-level data for several large U.S. retailers and finds tariffs were passed through almost fully to U.S. import prices at the entry port. However, the effects on resulting retail prices were muted, suggesting tariff incidence was largely born by U.S. retailers. Importantly, these studies evaluated the effects of the tariff on all imports, not just qualifying low-value shipments, which comprise a small percentage of imports in each product category. If a comprehensive tariff did not lower supply prices, a tariff affecting only a small percentage of the total is even less likely to lower supply prices. In this analysis, we assume that higher U.S. import prices at the entry port are passed on entirely to U.S. consumers, similar to the assumptions in Fajgelbaum and Khandelwal (2024).

[42] We highlight three reasons why evidence of full pass-through is accompanied by uncertainty. First, analysis of the recent tariff episode is drawn from a relatively short time window before the effects of the global pandemic and supply chain disruptions thoroughly confounded the ability to measure longer run effects carefully. This episode includes elements of what Fajgelbaum and Khandelwal term the "trade war" that are important because firms on both sides of the market were experiencing shocks to both supply (via traded inputs) and demand, making identification of the demand effects complicated. Further, a potential reason for complete pass-through of tariffs is that markets are slow to adjust to shocks: prices are locked in by previously negotiated contracts; and consumers of imported goods are slow to find alternative sources of supply. Second, while the recent episodes tend to find complete pass-through for most goods they examine, there is some heterogeneity in the response across firms and product sectors. This no doubt results from differences in market structure, response horizons, and substitution options in both supply and demand. As an example, Fajgelbaum and Khandelwal (2021) emphasizes that this work does not address how tariffs might change the selection of products to be imported, or the possibility that foreign suppliers might downgrade the quality of imported products while holding prices fixed. Finally, it should be said that while the evidence of complete tariff pass-through in the recent episode is very strong, it is also regarded as significantly puzzling and a subject for active research to uncover precisely why foreign supply prices were not more responsive.

or 65 percent of the tariff increase in the high scenario, consumer surplus losses are offset by increased tariff revenue.[43] [44]

5. Impacts are largely concentrated among qualifying low-value shipments containing Section 301 goods, which are subject to tariffs under the proposed rule. In the high scenario, we estimate additional costs for a subset of qualifying low-value shipments not containing Section 301 goods, which may be subject to additional broker fees to comply with the rule's requirements to provide HTSUS codes.

6. Apparel manufacturing comprises the majority (51.4 percent) of the value of qualifying low-value shipments. While the effects of the rule on each industry are not exactly proportional to its share of imports (due to differing demand elasticities and tariffs in each sector), the effects are concentrated among few industries comprising most affected imports.

7. *Distributional considerations:* While data limitations hindered our ability to examine how the proposed rule may disproportionately impact some consumers, Fajgelbaum and Khandelwal (2024)[45] provide evidence that eliminating the administrative exemption entirely would disproportionately affect lower-income and minority consumers. In their paper, the authors explain that direct-to-consumer imports comprise a higher share of household spending for zip codes with lower incomes and lower shares of white households. Their analysis finds that consumers in the poorest zip codes lose 24.8 percent more consumer surplus than the representative consumer. In Appendix A in the standalone RIA, we provide additional detail on this study and its applicability to our analysis of the proposed rule.

8. *Baseline growth in qualifying low-value imports* is highly uncertain. In our main estimates, we assume that post-2025 growth in qualifying low-value import values follows growth in real GDP. In essence, this implies that the value of qualifying low-value shipments would comprise the same share of overall GDP in each year from 2025 to 2034. Growth in the low-value import sector, however, has considerably outpaced GDP in recent years. As a sensitivity analysis, we

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[43] It is possible that there will also be an increase in producer surplus. See Section 3.1.

[44] As noted earlier, our analysis focuses primarily on the overall societal effect of the proposed rule. It does not quantify the potential distributional effects associated with the incidence of the increased prices for affected goods and the incidence of revenue gains associated with the collection of tariff revenue; however, it describes the potential distributional effects of increased prices qualitatively in Section 3.4 and Appendix A. If more of the tariff is borne by foreign producers, price increases will be smaller, reducing the disproportionate impact on lower-income consumers. The potential for disproportionate impacts associated with tax policies designed to return tariffs to consumers also exists in such a scenario.

[45] Fajgelbaum, P.D. and A. Khandelwal. (2024). "The Value of De Minimis Imports." National Bureau of Economic Research Working Paper No. 32607.

present a high-growth scenario assuming 18.4 percent annual increases in qualifying low-value shipment value and associated welfare effects. This percentage corresponds with the growth in total low-value shipment values between 2023 and 2024 and is generally reflective of growth since 2016. The resulting present value of welfare losses over the 10-year analysis period is approximately doubled relative to our main estimates: using a discount rate of 2 percent, we estimate $47.2 billion in net welfare losses in the low scenario and $262.5 billion in net welfare losses in the high scenario. We note, however, that sustaining 18 percent growth in the value of qualifying low-value shipments may be implausible.

Our primary estimates are presented in Table 3. Programming costs to the U.S. government associated with rule implementation are also considered. Over the 10-year period of our analysis, the present value cost of these software changes is approximately $460,000, assuming a discount rate of 2 percent.

TABLE 3—PARTIAL EQUILIBRIUM ANALYSIS RESULTS: 2025–2034 MAIN RESULTS

[$Billions, 2024 dollars]

Year	Low impact scenario			High impact scenario		
	Consumer	Tariff	Welfare	Consumer	Tariff	Welfare
2025	–$10.0	$7.8	–$2.2	–$18.2	$5.9	–$12.3
2026	–10.3	8.0	–2.2	–18.6	6.0	–12.5
2027	–10.5	8.2	–2.3	–18.9	6.2	–12.8
2028	–10.7	8.3	–2.3	–19.3	6.3	–13.0
2029	–10.9	8.5	–2.4	–19.6	6.4	–13.2
2030	–11.0	8.6	–2.4	–19.9	6.5	–13.4
2031	–11.2	8.7	–2.5	–20.3	6.6	–13.7
2032	–11.4	8.9	–2.5	–20.6	6.7	–13.9
2033	–11.6	9.1	–2.5	–21.0	6.8	–14.2
2034	–11.8	9.2	–2.6	–21.4	7.0	–14.4
Total, undiscounted	–109.4	85.4	–24.0	–197.9	64.5	–133.4
Present value, 2% d.r.	–99.9	78.0	–21.9	–180.8	58.9	–121.9
Annualized, 2% d.r.	–10.9	8.5	–2.4	–19.7	6.4	–13.3

Note: Growth in the value of qualifying low-value shipments is assumed to match growth in real GDP from 2025 to 2034. When growth is assumed to match year-over-year growth in low-value shipments since 2016, net welfare losses in the low scenario are estimated at $47.2 billion and $262.5 billion in the high impact scenario.

Incremental Benefits

The proposed rule would preclude goods subject to specified trade or national security actions from claiming the administrative exemption, which would strengthen the effectiveness of the United States' trade and national security actions. Moreover, the change in eligibility for the administrative exemption would significantly reduce the volume of qualifying low-value shipments, and to enforce this change in eligibility for the administrative exemption, CBP would require all low-value shipments entered through basic entry to provide an additional data element. Both the reduction in qualifying low-value shipments and the additional data would improve CBP's ability to identify violative goods and prevent inadmissible merchandise from entering the United States. These benefits are described qualitatively below.

Trade and National Security Actions

First, the proposed rule would strengthen the effectiveness of United States' trade and national security actions. Section 301 tariffs are meant to incentivize changes in foreign governments' acts, policies, or practices. Additionally, specified trade and national security actions can be used to protect U.S. industries from injurious serious injury, or the threat thereof, caused by import surges, unreasonable or discriminatory practices, or adjust imports that threaten to impair national security. Allowing these goods to be imported without assessing the Section 301 tariff that would otherwise be applicable undermines this effort. Excluding these goods from the administrative exemption and requiring additional data will allow CBP officers to assess additional duties, specified in an applicable trade or national security action.

By increasing tariff revenue, this rule would help accomplish the goals of the tariff actions. The largest effect would be on goods subject to Section 301 tariffs. Based on a random sample of 6,238,717 type 86 entries in fiscal year 2023, we estimate that 77 percent of the total value of all ET86 entries covered goods subject to tariffs imposed under Section 301. According to CBP statistics, the total value of all imports claiming the administrative exemption in FY 2023 was $54.6 billion. We assume that the share of the total value of qualifying low-value shipments containing goods subject to Section 301 tariffs was the same for entries entered under the "release from manifest" process as compared to type 86 entries. With this assumption, we estimate that the total value of all qualifying low-value shipments that would have been subject to Section 301 tariffs in fiscal year 2023 was $41.1 billion. The total value of type 01 and 11 entries covered by Section 301 tariffs that same year was $215.9 billion. Hence, we estimate that qualifying low-value shipments made up 16.0 percent of the total value of goods covered by Section 301 tariffs. This rule would therefore strengthen the incentive for China to eliminate its acts, policies, and practices related to technology transfer, intellectual property, and innovation that are unreasonable or discriminatory and burden or restrict U.S. commerce.

Targeting of Violative Shipments

In addition to the primary benefit of this regulation, strengthening U.S. trade and national security actions, the proposed rule will also support CBP's efforts to identify and intercept items violating import laws and regulations. The proposed rule would require all shipments claiming the administrative exemption under 19 U.S.C. 1321(a)(2)(C), entered under either the proposed new basic or the proposed new enhanced entry process, to provide a 10-digit HTSUS classification for the merchandise within the shipment. In the absence of the proposed modification to the rule as proposed in the ELVS NPRM, basic entries would not be required to provide 10-digit HTSUS classifications. This additional data element would allow CBP to more effectively target and screen basic entries in order to identify violative shipments (*e.g.*, prohibited items that are not allowed to enter the United States and other items ineligible for entry under the administrative exemption). CBP seizure statistics show that low-value shipments pose a security concern when compared to type 01 and 11 entries. In particular, CBP finds that goods claiming the administrative exemption have higher seizure rates for narcotics, IPR violations, and prohibited items than goods entered through entry type 01 and 11. See Section 5 of the standalone RIA for more details on the security concerns posed by low-value shipments. Imports claiming the administrative exemption made up 87 percent of total seizures in fiscal year 2023.

Macroeconomic and Distributional Effects

We estimate the macro-economic and distributional effects of the proposed rule using USAGE–TERM, a computable general equilibrium (CGE) model of the United States. At its most disaggregate level USAGE–TERM tracks variables like inputs, output, employment, investment, trade, and prices for 513 sectors in 70 regions across the U.S. A summary of the results of the CGE analysis follows:

- In the low impact scenario, we estimate that the average price of imported goods would be 0.29% higher. We estimate that consumer prices would be 0.10% higher in year 1 and 0.12% higher in year 10.
- We estimate consumer welfare losses of $9.5 billion in year 1, shrinking to $6.7 billion in year 10.
- We estimate a decrease in GDP, compared to the baseline, of 0.03% in both year 1 and year 10.

- Sectors that benefit from the proposed rule, like apparel, textiles, and leather, would see job growth. These sectors would employ 5,900 more people in year 1, and 3,900 more people in year 10 compared to the baseline.
- We did not explicitly model the impacts on the logistics and express sectors. To the extent that consumers use more logistics and express services we would expect these sectors to benefit from the proposed rule.
- These job gains, which could be a result of new jobs being created or fewer job separations, would be offset by a net reduction of jobs in other sectors. On net, the U.S. economy would have 97,000 fewer jobs in year 1, due to an increase in job separations and a reduction in new hires. By year 10 the economy would return to full employment.[46]
- In the high impact scenario, we estimate that the average price of imported goods would be 0.51% higher. We estimate consumer prices would be 0.17% higher in year 1 and 0.21% higher in year 10.
- In the high impact scenario, we estimate consumer welfare losses of $16.5 billion in year 1, shrinking to $11.6 billion in year 10.
- We estimate a decrease in GDP, compared to the baseline growth of GDP, compared to the baseline, of 0.06% in year 1 and 0.05% in year 10.
- Sectors that benefit from the proposed rule, like apparel, textiles, and leather, would see job growth. These sectors would employ 9,700 more people in year 1, and 6,400 more people in year 10 compared to the baseline.
- These job gains would be offset by fewer jobs in other sectors. On net, the U.S. economy would have 136,000 fewer jobs in year 1, due to an increase in job separations and a reduction in new hires. By year 10 the economy would return to full employment.

B. Additional Requirements for Regulatory Analysis

Table 4 provides a cost accounting statement for the proposed rule. Estimates correspond to the low-impact scenario based on our understanding that many low-value shipments are likely to be consolidated under the proposed rule to lessen costs associated with fees. Therefore, CBP considers the low-impact scenario as the primary estimate of the impact of this proposed rule.

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[46] For context, in 2023, 68.1 million U.S. workers separated from their job, either voluntarily or involuntarily. But in 2023, 70.8 million workers were hired at new jobs, leading to the economy adding about 2.7 million jobs on net. These estimates suggest that if the proposed rule had been first active in 2023, the economy would have added about 2.6 million jobs on net instead.

TABLE 4—A–4 ACCOUNTING STATEMENT FOR THE PROPOSED RULE

Category	Annualized estimate (in 2024 dollars)	Source citation
Benefits		
Monetized benefits	None	RIA, Chapter 5.
Quantified, non-monetized benefits	None.	
Qualitative (unquantified) benefits	Greater enforcement/effectiveness by requiring goods with 232, 201, and 301 duties to utilize entry types subject to duty payment. Improved targeting of violative shipments by requiring certain qualifying low-value shipments to provide HTSUS codes that describe the contents of the entry. In certain cases, CBP estimates that consolidation of shipments would lead to faster merchandise release, enhanced national security and improved health and safety.	
Costs		
Monetized costs	$10.9 billion (low scenario) or $19.7 billion (high scenario) in consumer surplus loss.	RIA, Chapter 3.
Quantified, non-monetized costs	None.	
Qualitative (unquantified) costs	None.	
Cost Savings Monetized costs	None.	
Quantified, non-monetized cost savings	None.	
Qualitative (unquantified) cost savings	None.	
Transfers		
Monetized budgetary transfers	None	RIA, Chapter 3.
Other monetized transfers	$8.5 billion (low scenario) or $6.4 billion (high scenario) in additional duty revenue, paid for by U.S. consumers assuming full pass-through by foreign producers and returned to consumers to offset consumer surplus loss.	
Distributional Effects		
Effects on State, local, and/or tribal governments.		
Effects on small businesses		

Category	Annualized estimate (in 2024 dollars)	Source citation
	The proposed rule affects consumers, which could include anyone in the United States, including businesses, not-for-profit organizations, government jurisdictions, as well as individuals. As a result, a substantial number of small entities are likely to be affected. Prices for an individual affected low-value shipment could increase by 12.2 to 31.2 percent, depending on whether only tariffs or tariffs plus broker fees are incurred, the type of carrier transporting the shipment into the United States, and the underlying value of the shipment. Lacking readily-available information describing the number of qualifying low-value shipments and their value imported annually by small entities, CBP cannot certify this rule under the Regulatory Flexibility Act at this time. Instead, it conducts an Initial Regulatory Flexibility Analysis (IRFA).	RIA, Chapter 6.
Effects on inflation	Inflation increases by between 0.1% and 0.17% in year 1	RIA, Chapter 4.
Effects on growth	GDP growth is 0.03% lower in year 1	RIA, Chapter 4.

Note: Present value calculations use 2025 as the base year. Costs are annualized over 10 years from 2025 to 2034 and reflect a 2 percent discount rate.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Under the requirements of the RFA, as amended by SBREFA and Executive Order 13272 entitled "Proper Consideration of Small Entities in Agency Rulemaking," agencies must consider the potential impact of proposed regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules.

Specifically, CBP is required to prepare an RFA analysis and take other steps to assist small entities, unless it certifies that the rule will not have a "significant economic impact on a substantial number of small entities." The Small Business Administration (SBA) provides guidelines on the analytical process used to assess the impact of a particular rulemaking on small entities. Generally, an agency first conducts a threshold analysis to determine whether it can certify the proposed rule. The threshold analysis provides the factual basis for such a determination. If the results of the threshold analysis indicate that a rule may have a significant impact on a substantial number of small entities, or if the agency is uncertain, it is required to prepare an Initial Regulatory Flexibility Analysis (IRFA) and publish the IRFA for public comment with the proposed rule. The analytic components of an IRFA are:

1. A description of the reasons why action by the agency is being considered;

2. A succinct statement of the objectives of, and legal basis for, the proposed rule;

3. A description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

4. A description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;

6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, such as,

- *the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;*
- *the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;*
- *the use of performance rather than design standards; and,*
- *an exemption from coverage of the rule, or any part thereof, for such small entities.*

This section presents data and analysis in support of these requirements. First, we provide an overview of the proposed rule, and then we conduct the threshold analysis in Section 6.2 of the RIA. Because the significance of impacts of the proposed rule on small entities is uncertain, we also prepare an IRFA in Section 6.3 of the RIA.

Overview of the Proposed Rule

This proposed rule makes merchandise subject to an *ad valorem* tariff pursuant to a trade or national security action under Section 232, 201, or 301 ineligible for the administrative exemption in 19 U.S.C. 1321(a)(2)(C).

Such shipments would instead need to be entered through an alternate entry type, such as entry type 01 (formal) or entry type 11 (informal). Importers of such goods would then have to pay both the additional duties owed under a specified trade or national security action and regular customs duties, if applicable, when the value is below $800. To enable CBP to determine which entries are ineligible, CBP would require a 10-digit Harmonized Tariff Schedule of the United States (HTSUS) classification for all shipments of merchandise entered using the basic or enhanced entry processes proposed in the ELVS NPRM and claiming the administrative exemption. In the ELVS NPRM, CBP proposed to require that HTSUS codes be collected for qualifying low-value shipments entered through an enhanced entry process. Modifying these changes proposed in ELVS, this Trade and National Security Actions and Low-Value Shipments NPRM would expand that requirement to low-value shipments entered through the basic entry process proposed in ELVS, by requiring the provision of a 10-digit HTSUS code(s) on the bill of lading or other entry document.

This proposed rule would strengthen the United States' trade and national security actions, especially for Section 301 tariffs. For example, the goal of the current Section 301 tariffs is to discourage China's acts, policies, and practices related to technology transfer, intellectual property, and innovation that are unreasonable or discriminatory and burden or restrict U.S. commerce. Additionally, trade and national security actions can be used to protect domestic industries from substantial threat of serious injury, or the threat thereof by import surges or adjust imports that threaten to impair national security. An industry that is particularly vulnerable to circumvention by qualifying low-value shipments is the U.S. textile and apparel manufacturing industry. A large volume of textile and apparel imports claim the administrative exemption thereby avoiding tariffs. Specifically, approximately 50 percent of the value of current qualifying low-value shipments is attributed to textiles and apparel that would otherwise be subject to additional duties under Section 301.[47] Broadly speaking, an estimated 15.9 percent of imports covered by Section 232, 201, and 301 tariffs are exempt from the additional tariffs under the administrative exemption.[48] By including imports that would have been eligible for the administrative exemption without this rule, CBP would increase the effectiveness of these specified

[47] Proportion of qualifying low-value shipments containing Section 301 textile and apparel items is calculated using data on type 86 entries provided by CBP via email on August 14, 2024. We assume that qualifying low-value shipments cleared off the manifest are similar in nature to goods using type 86 entry.

[48] See Chapter 5 of the RIA available in the docket of this rulemaking for sources and estimation method.

trade and national security actions. These actions would help protect national security and discourage unreasonable or discriminatory practices.

This rule would also increase CBP's inspection efficiency by shifting a large share of low-value shipments into alternative entry types. Qualifying low-value entries are more challenging for CBP to efficiently inspect than other entry types because they arrive with more limited data. As a result, CBP officers must do more work to ensure a low-value shipment is admissible and otherwise complies with applicable U.S. trade laws and regulations. Shipments entered using entry type 01 or entry type 11, in contrast, arrive with more detailed information about the contents of the goods included in the shipment.

Furthermore, shifting low-value shipments to an alternative entry type is likely to result in consolidation of multiple items into a single shipment. Specifically, the $800 limit for qualifying low-value shipments incentivizes importers to de-consolidate goods into numerous low-value shipments to avoid paying tariffs. Absent the ability to avoid tariffs, importers are likely to be incentivized to reduce per-unit shipping costs by consolidating items in bulk shipments. This consolidation results in fewer, higher value entries, where multiple items can be reviewed by CBP officers at the same time.

Finally, the proposed rule is likely to improve CBP's ability to accurately identify the contents of a shipment claiming the administrative exemption even if it does not contain goods subject to a trade or national security action under Section 232, 201, or 301. Many of these goods currently use manifest clearance to enter the United States. The "release from manifest" entry process (or the proposed new basic entry) is (or would be) less costly for importers, because less information is submitted to CBP, but the release of shipments by CBP is slower, averaging 3 days.[49] In contrast, shipments using entry types 01 or 11, or the current entry type 86 (or the proposed new enhanced entry), are (or would be) typically released by CBP within 1 day. This proposed rule would require a 10-digit HTSUS classification for all basic entry shipments. As a result, importers will likely opt for enhanced entry, with its faster clearance times, given that the difference in administrative costs between basic and enhanced will become negligible. Having the HTSUS classification, along with several additional data elements required for enhanced entry, will improve CBP's ability to identify violative shipments. Furthermore, because enhanced entry is an automated process with required data

[49] See the ELVS Regulatory Analysis supporting the NPRM.

elements being submitted in advance of the shipment's arrival in the United States, additional efficiency gains for CBP officers and importers are likely.

Threshold Analysis

A threshold analysis conducted pursuant to RFA/SBREFA involves determining whether the proposed regulatory changes will significantly impact a substantial number of small entities subject to the regulation. Responding to this question requires understanding both: (1) the number of affected entities that are small; and (2) the economic impact on these small entities in the context of the proposed regulatory action.

Should the proposed rule go into effect, entities could be affected in two ways:

1. Imports subject to a trade or national security action under Section 232, 201, or 301 would no longer qualify for the administrative exemption in 19 U.S.C. 1321(a)(2)(C), which allows a shipment to be imported duty-free when the aggregate fair retail value in the country of shipment for articles imported into the United States on the same day and exempted from the payment of duty does not exceed the administrative exemption limit of $800 per person per day. Consignees (*i.e.,* consumers) of these imports will pay higher prices for the goods resulting from tariffs and, possibly, additional processing fees.

2. Paperwork for other imported goods using the administrative exemption will need to include HTSUS codes to facilitate CBP's ability to confirm that the goods are not covered by Section 232, 201, or 301 tariffs. Consignees of these imports will pay higher prices for the goods resulting from additional processing fees assessed by CBP and by licensed customs brokers.

Judicial review of agency compliance with the RFA requirements limits the scope of regulatory flexibility analyses to directly regulated entities (SBA 2017). In the case of the proposed rule, the entities that would have claimed the administrative exemption absent the proposed rule are considered directly regulated and therefore the subject of the threshold analysis. Here, consignees (*i.e.,* consumers) are the entities or individuals potentially eligible for the administrative exemption. As described in detail in Section 3.4 of the RIA, we assume that all duties and fees are incurred directly by consignees.

Consistent with the scenarios evaluated in the above sections, this section conducts the threshold analysis under two scenarios meant to act as upper and lower bounds of the effects of this proposed rule. These scenarios highlight the uncertainty regarding how importers will respond to the rule requirements:

• *Low Impact Scenario:* All importers respond to avoid fees. Importers of Section 232, 201, and 301 goods consolidate while importers of goods not subject to specified trade or national security actions either consolidate or move to postal. In this scenario, price increases are limited to required tariffs, because all other fees are assumed to be fully mitigated.

• *High Impact Scenario:* In this scenario, less consolidation of shipments occurs. As a result, in addition to tariffs, prices are also affected by higher fees. See Sections 3.3.1 and 3.3.2 of the RIA for detailed descriptions of the price shocks under each scenario.

Substantial Test

This section explores whether a substantial number of affected entities are small. The RFA does not provide a definition of a "substantial number." In its guide to government describing how to comply with the RFA, the SBA states:

"Substantial number" depends on the number of regulated entities and the size of the regulated industry. The interpretation of the term-"substantial number" is not likely to be five small firms in an industry with more than 1,000 small firms. On the other hand, it is important to recognize that five small firms in an industry with only 20 firms would be a substantial number. Depending on the rule, the substantiality of the number of small businesses affected should be determined on an industry-specific basis and/or on the number of small businesses overall. (SBA 2017, p. 21.)

This analysis evaluates the extent to which a substantial number of consignees that would become ineligible for the administrative exemption due to the proposed rule are small entities. Affected consignees could be anyone in the United States—including businesses, not-for-profit organizations, and government jurisdictions as well as individuals—that purchases a good valued at $800 or less from a retailer that manufactures products outside of the United States. Individuals are not "entities" as defined by the RFA, and thus are excluded from this analysis.

All small entities in the United States have the potential to be affected by the proposed rule. As described in Chapter 3 of the standalone RIA document, the proposed rule affects products produced by 19 industries defined at the 3-digit North American Industry Classification System (NAICS) sector, with more than half of the affected goods coming from the apparel industry. Ideally, this analysis would rely on all historical low-value shipment transactions to characterize the entities most likely to be affected by the proposed rule. In the absence of that information, we characterize which industries are most likely to be affected, and which portion of consignees may be small entities, using data on consignees who imported goods using type 86 entries over the course of an example day in fiscal year 2023. This analysis relied on the following steps:

1. Identify a sample of businesses that are consignees. As noted above, we rely on a sample of shipments using type 86 entry for one day in fiscal year 2023 as a representative sample of consignees importing qualifying low-value shipments absent this rule. On this date, CBP identified nearly 1.2 million consignees associated with approximately 1.6 million type 86 entries. Within this list, CBP detected 786 likely businesses based on the names provided in the “header party” field and randomly selected 394 of these businesses for analysis.[50] [51]

2. Obtain the business profiles of the consignees. We uploaded the names and location information for the 394 businesses to D&B Hoovers’ website and relied on D&B Hoovers’ proprietary algorithm to match entities with the information stored in its database.[52] For the 394 businesses in our sample, D&B Hoovers’ search functionality was able to match profiles for 182 entities (46 percent). The 212 unmatched consignees either do not have business profiles in D&B Hoovers or the owner’s name and location information provided by CBP do not match the business records on the site. For the 182 matched entities, we collect primary NAICS code, number of employees,[53] and annual revenue information as presented in D&B.[54]

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[50] To detect businesses, CBP looked for entities that used the following key terms in their names: Inc., Co., LLC. Individuals with these letter combinations in their names were later manually screened out of the sample. CBP did not attempt to identify not-for-profit organizations or governmental jurisdictions in its consignee data. (Personal communication between IEc and CBP on July 6, 2023.)

[51] Data pulled from ACE Reports on June 13, 2023 representing all consignees of type 86 entries on January 1, 2023. CBP provided the cleaned data to IEc via email on June 23, 2023.

[52] This process relies on D&B Hoovers’ automated search functions to identify the business profiles associated with a list of businesses, not manual business-by-business searching. This search functionality is described in more detail in D&B Hoovers (2019, p. 25). This resource is available at *https://app.dnbhoovers.com/product/wp-content/uploads/2020/10/DB-Hoovers-User-Guide-920.pdf.*

[53] D&B Hoovers contains data fields for both “employees at single site” and “employees at all sites.” When both numbers are provided, we default to using the “employees at all sites” entry in order to capture the size of the larger parent company. When only the “employees at single site” information is available, we use that entry instead.

[54] The matched data was downloaded from D&B Hoovers on July 27, 2023, accessed via: *app.dnbhoovers.com/login.* We assume all data to be in 2023 dollars, consistent with the download date.

3. Determine which businesses in the sample are small businesses. We compare number of employees and annual revenues with the SBA's definitions of small business associated with each six-digit NAICS code (SBA 2023).[55]

The 182 businesses in the sample are associated with 117 NAICS codes (6-digit) spanning many sectors. Table 5 provides a sample of NAICS codes represented by the consignee businesses to demonstrate the breadth of industries associated with type 86 entries on a given day. As shown in Table 6, the consignees organize into nearly every 2-digit sector NAICS code. Using the 6-digit NAICS codes for classification purposes, 92 percent of businesses in the sample qualify as small businesses.

Data from CBP does not identify the type of good associated with the consignees, therefore we are unable to differentiate between entities that would be affected by Section 301 tariffs (in both the low scenario and high scenario) and all other entities that would be affected by fees in the high scenario only.

Taken together, this analysis finds that a substantial number of small entities may be affected by the proposed rule.

Table 5—Example NAICS Codes Among Sampled Consignees

NAICS code	Industry
111998	All Other Miscellaneous Crop Farming.
221118	Other Electric Power Generation.
236115	New Single-family Housing Construction.
238340	Tile and Terrazzo Contractors.
238910	Site Preparation Contractors.
238990	All Other Specialty Trade Contractors.
311615	Poultry Processing.
325199	All Other Basic Organic Chemical Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325510	Paint and Coating Manufacturing.
325910	Printing Ink Manufacturing.
332312	Fabricated Structural Metal Manufacturing.
332322	Sheet Metal Work Manufacturing.
332710	Machine Shops.
333310	Commercial and Service Industry Machinery Manufacturing.
335313	Switchgear and Switchboard Apparatus Manufacturing.
339940	Office Supplies (except Paper) Manufacturing.

[55] In some cases, SBA provides a size standard for the NAICS code as well as an "exception" for a sub-set of businesses with specific activity types. This analysis does not consider the "exceptions" when classifying businesses as small.

NAICS code	Industry
423110	Automobile and Other Motor Vehicle Merchant Wholesalers.
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.
423110	Automobile and Other Motor Vehicle Merchant Wholesalers.
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.
423110	Automobile and Other Motor Vehicle Merchant Wholesalers.
445110	Supermarkets and Other Grocery Retailers.
449110	Furniture Retailers.
449210	Electronics and Appliance Retailers.
531311	Residential Property Managers.
532111	Passenger Car Rental.
541618	Other Management Consulting Services.
561730	Landscaping Services.
611110	Elementary and Secondary Schools.
811111	General Automotive Repair.
811192	Car Washes.
812112	Beauty Salons.
812910	Pet Care (except Veterinary) Services.

Note: The NAICS codes presented in this table represent a sample of industries associated with entry type 86 consignees on a typical recent date, not a comprehensive list of all affected industries. See the main text for details.

TABLE 6—NUMBER OF SMALL BUSINESSES IN SAMPLE OF CONSIGNEES

Two-digit NAICS code [a]	Sector	Total businesses in sample	Small businesses in sample	Percent small
11	Agriculture, Forestry, Fishing and Hunting	1	1	100
22	Utilities	2	2	100
23	Construction	11	11	100
31	Manufacturing	2	1	50
32	Manufacturing	7	6	86
33	Manufacturing	17	16	94
42	Wholesale Trade	14	12	86
44	Retail Trade	23	22	96
45	Retail Trade	8	8	100
48	Transportation and Warehousing	5	5	100
49	Transportation and Warehousing	1	1	100
51	Information	5	5	100
52	Finance and Insurance	1	1	100
53	Real Estate and Rental and Leasing ...	5	5	100
54	Professional, Scientific, and Technical Services	21	20	95

Two-digit NAICS code [a]	Sector	Total businesses in sample	Small businesses in sample	Percent small
55	Management of Companies and Enterprises	2	1	50
56	Administrative and Support and Waste Management and Remediation Services.	9	7	78
61	Educational Services	2	1	50
62	Health Care and Social Assistance	5	4	80
72	Accommodation and Food Services	6	5	83
81	Other Services (except Public Administration)	18	17	94
99	Unclassified [b]	17	17	100
Total		182	168	92

Sources: IEc analysis of 182 businesses named as consignees of type 86 entries for one day in 2023 (provided by CBP), business profiles from D&B Hoovers, and SBA small business size standards (SBA 2023). See text for details.

Notes:

1. While 2-digit NAICS codes are used for presentation purposes, the 6-digit NAICS codes were used to determine which businesses are small.
2. All businesses identified with NAICS code 999990 in D&B Hoovers are presumed small.

Significance Test

This section tests whether the effects of the rule would be significant for the small entities identified above. The RFA does not define a "significant effect" in quantitative terms. In its guidance to agencies on how to comply with the RFA, SBA states,

[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulation. (SBA 2017, p. 18.)

DHS component agencies typically assume that an annual per entity cost exceeding 1 percent of the annual gross revenues for that entity is significant (Houser 2012). Therefore, this analysis considers the 1 percent threshold when analyzing these potential impacts.

To accurately assess whether small entity consignees are likely to be significantly affected by the rule requires data on the total volume of affected shipments each entity is likely to purchase. Data describing total historical qualifying low-value shipment volume for the 168 small businesses in the sample of consignees provided by CBP is not readily available. Instead, we compare the value of the shipments with the percent increase in cost considering Section 301 tariffs (for the low and high scenarios) as well as the increased fees associated with entry (for the high scenario only). While the value of a shipment is not a measure of revenue, it provides a proxy for the capacity of entities to absorb the potential increases in shipment costs.

Low Impact Scenario

In the low impact scenario, qualifying low-value shipments formerly claiming the administrative exemption incur tariffs averaging 21.25 percent on an *ad valorem* basis (see Chapter 3 in the standalone RIA available in the docket of this rulemaking). As described in Chapter 3, we assume consignees incur 100 percent of the tariff. Table 7 presents the distribution of affected shipments by shipment value, using entry type 86 shipments imported in fiscal year 2023 as a representative sample (*i.e.,* the exact distribution may differ for shipments cleared off the manifest that would have entered with an administrative exemption in the baseline).

TABLE 7—DISTRIBUTION OF QUALIFYING LOW-VALUE SHIPMENTS BY SHIPMENT VALUE

Shipment value bin	Mid-point of shipment value	% of total entry type 86 shipments
$0–$5	$2.50	18.5
$6–$25	15.50	43.0
$26–$50	38.00	20.0
$51–$75	63.00	8.4
$76–$100	88.00	4.7
$101–$200	150.50	4.7
Over $200	500.50	0.8

Source: IEc analysis of data provided by email from CBP on September 9, 2024.

Using the mid-point of shipment value for each bin, the weighted average value per shipment is approximately $32. Applying the tariff rate likely to be incurred by consignees, we find that the increased cost per shipment is approximately $6.80 (21.25 percent of $32). We do not have readily available data on the number of affected shipments imported annually per entity. Therefore, it is uncertain whether tariff rates of this magnitude impose a significant impact on small entities importing these affected shipments under the low scenario. However, a 21.25 percent increase in the cost of importing affected goods represents a significant impact relative to the value of the shipment.

High Impact Scenario

In the high impact scenario, consignees of affected low-value shipments experience price increases resulting from the tariffs described above in the low impact scenario. Additionally, some consignees incur additional price increases resulting from fees required to file and process shipments (for a detailed description see Chapter 3 in the standalone RIA available in the docket of this rulemaking). Table 8 summarizes the additional per shipment fees that might be incurred, depending on the carrier providing shipping services. None or some combination of these fees apply, depending on whether the shipment includes a good subject to additional Section 232, 201, or 301 duties, and whether a broker is already involved in the shipping process in the baseline.

TABLE 8—PER SHIPMENT FEES

Type	Fee ($/shipment)
Broker fee: [1]	
Commercial non-express carrier [2]	$1.00
Express commercial carrier [3]	30.00
Postal carrier [3]	8.55
Merchandise Processing Fee: [4]	
All	2.53

Sources and assumptions:

[1] A licensed broker is not currently required for the "release from manifest" entry process, nor would the ELVS NPRM require one for the basic entry process if the ELVS NPRM is finalized as proposed. We assume for the purposes of this analysis that a broker fee is charged for any entry requiring an HTSUS code and is similar regardless of whether the filer uses enhanced entry, entry type 86, 01, or 11. (Source: Personal communication with representatives of a major broker association on 9/26/2024.)

[2] Email from CBP dated 10/11/2024.

[3] Fajgelbaum and Khandelwal (2024).

[4] Minimum merchandise processing fee for informal entries as of October 1, 2023. (As viewed on 10/11/2024 on *https:// www.federalregister.gov/documents/2023/07/28/2023–16197/cobra-fees-to-be-adjusted-for-inflation-in-fiscal-year-2024-cbp-dec-23–08.*) Informal entries apply to shipments that do not exceed $2,500 and is the entry option most likely to be used for shipments currently exercising the administrative exemption (*i.e.*, shipments that do not exceed $800).

Relying on the detailed information characterizing shipment/fee combinations provided in Chapter 3 in the standalone RIA (available in the docket of this rulemaking) we find:

- Approximately 73 percent of qualifying low-value shipments do not experience increases in fees; only additional tariffs will apply.
- Among the commercial non-express carriers, only the consignees with shipments moving from manifest clearance to enhanced are expected to incur increased fees. This bin represents approximately 4 percent of total qualifying low-value shipment volume. Increased fees range from 1 percent to 40 percent of the value of the shipment.
- Among express commercial carriers, nearly all shipments will incur additional fees, ranging from 1 percent to 1,301 percent of the value of the shipment. These fees are in addition to the tariffs described above. The affected shipments represent 18 percent of total qualifying low-value shipments.
- For postal, only shipments containing Section 232, 201, and 301 goods experience additional fees. These shipments represent approxi-

mately 6 percent of total low-value shipment volume. Increased fees range from 2 percent to 443 percent of the shipment value, and are in addition to tariffs.

As described in the low impact scenario, data describing the number, value, and entry mode of qualifying low-value shipments by consignee is not readily available. Therefore, we are uncertain whether tariffs and fees of this magnitude impose a significant impact on the annual revenues of small entities importing these affected shipments. However, the value of fees and tariffs relative to the value of individual shipments suggests the potential for a significant increase in the price of affected goods. Given that options exist for reducing fees, such as consolidation, and are likely to be available for many shipments, we believe the low impact scenario is more likely.

D. Initial Regulatory Flexibility Analysis (IRFA)

Due to uncertainty regarding whether impacts to various small entities are significant, CBP does not certify that this rule has a significant economic impact on a substantial number of small entities and we instead provide information in this section for an IRFA.

1. A description of the reasons why action by the agency is being considered.

U.S. trade law authorizes the President or USTR to assess additional tariffs under certain acts of Congress, including the Trade Expansion Act of 1962 and the Trade Act of 1974. Section 232 of the Trade Expansion Act of 1962 authorizes the President to adjust imports of an article and its derivatives if there is a determination that the article is being imported in such quantities or under such circumstances as to threaten to impair the national security. Section 201 of the Trade Act of 1974 authorizes the President to impose temporary trade measures if there is substantial cause of serious injury or threat thereof to U.S. industries because of increased imports. Lastly, Section 301 of the Trade Act of 1974 allows USTR to impose import restrictions to address, among others, unreasonable or discriminatory acts, policies, or practices that burden or restrict U.S. commerce. This proposed rulemaking will refer to Section 232, 201, or 301 as "specified trade or national security actions."

Trade or national security actions are designed to protect domestic industries and the American public from serious injury, or the threat thereof, caused by import surges and unfair trade practices or to adjust imports that threaten to impair national security, or to encourage foreign governments to eliminate policies that are unreasonable or discriminatory and burden or restrict U.S. commerce. However, some merchandise subject to specified trade or national security actions may also be eligible for the administrative exemption pursuant to Section 321 of the Trade Act of 1930, as amended (19 U.S.C. 1321(a)(2)). Section 321 provides administrative exemptions from duty and taxes that are imposed by reason of importation for three categories of imported articles:

- Certain bona-fide gifts valued at $100 or less ($200, if the gift was from certain island possessions) sent from persons in foreign countries to persons in the United States;
- Certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and
- All other imported articles when the aggregate fair retail value of the articles in the country of shipment is $800 or less.

This proposed rulemaking concerns shipments in the third category, which are covered by the administrative exemption in 19 U.S.C. 1321(a)(2)(C). To avoid confusion with the other two administrative exemptions, we will refer to this exemption alone as the "administrative exemption." Specifically, the administrative exemption allows a shipment to be imported free of duties and taxes imposed upon or by reason of importation when the aggregate fair retail value in the country of shipment of articles imported by the same person on the same day and exempted from the payment of duty is less than or equal to $800. The administrative exemption limit was originally set at $1 in the Customs Administrative Act of 1938 to limit the "expense and inconvenience" of collecting duty when it was a disproportionate amount of work by the U.S. government compared to the amount of revenue that would be collected. Since its inception, Congress has increased this daily aggregate value cap to $5 in 1978, $200 in 1993, and $800 in 2016. In recent years, the volume of imports subject to specified trade or national security actions has increased, but the tariffs imposed as a result of these actions do not apply to imports that enter as qualifying low-value shipments. Thus, the administrative exemption dampens the impact of specified trade or national security actions by allowing imports that claim the exemption to legally avoid all duties and taxes that would otherwise be collected, including the additional duties collected under specified trade and national security actions. In fiscal year 2023, hundreds of thousands of shipments would have been assessed additional tariffs under Section 232, 201, or 301 had they entered through formal or other type of informal entry.

Additionally, low-value shipments create operational inefficiencies for CBP's ability to conduct an inspection of these goods. The volume of qualifying low-value shipments has risen sharply from approximately 139 million in fiscal year 2015 (prior to the increase in the exemption value) to 1 billion shipments per year in fiscal year 2023.[56] While entry type 86 has sped up processing for many of the qualifying low-value shipments, the remaining shipments are processed manually and with more limited data than other types of entries. CBP anticipates that this rulemaking would reduce the volume of qualifying low-value shipments and thereby increase the efficiency with which CBP identifies imports presenting security risks, including curbing the smuggling of illegal opioids such as heroin and fentanyl, by shifting some shipments to other entry types that require more data and the use of an authorized broker.

2. A succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed rulemaking aims to uphold the objectives of U.S. trade and national security actions, protect the revenue, and prevent unlawful importations. Trade or national security actions, such as additional tariffs under Section 232, Section 201, and Section 301, are meant to prevent specific harms such as the threat posed by certain imports to national security or domestic industries or to respond to discriminatory or unreasonable practices that restrict or burden U.S. commerce. The rule would prevent low-value shipments from circumventing these trade or national security actions by claiming the administrative exemption. Moreover, considering the rate of duties and the aggregate trade volume of affected imports, the amount of additional revenue to be collected under the proposed rule would substantially outweigh any added expense or inconvenience to the U.S. Government. Finally, CBP expects that the affected goods would be consolidated into larger shipments and entered under an appropriate formal or informal entry process, resulting in decreased overall volume of shipments. This consolidation would help CBP officers inspect entries for inadmissible merchandise more efficiently.

The authority to except merchandise subject to specified trade or national security actions from the administrative exemption comes from 19 U.S.C. 1321(b). This statutory provision authorizes regulations that except certain merchandise from eligibility for the administrative exemptions in 19 U.S.C. 1321(a) when such exceptions are consistent with the purpose of 19 U.S.C. 1321(a), or necessary to protect the revenue or to prevent unlawful importations. The authority to require HTSUS classification as part of the proposed basic entry process (in addition to the proposed enhanced entry process) as described in the ELVS NPRM comes from 19 U.S.C. 498(a)(1)(A), which authorizes the prescription of special rules for the declaration and entry of low-value shipments.

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[56] Data pulled from CBP's Automated Targeting System (ATS) database.

3. A description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

As described in Section 6.2.1 of the standalone RIA, the proposed rule does not directly regulate any one industry. Instead, it 1) imposes additional requirements on shipments that seek to use the administrative exemption, and 2) makes goods subject to *ad valorem* tariffs under Section 232, 201, and 301 ineligible for the administrative exemption. Therefore, any individual or entity that would have claimed the administrative exception in the baseline is affected by the proposed rule. Those individuals and entities importing goods that previously met the requirements for the administrative exemption are likely to be affected by higher prices for these goods.

Any small entity in the United States has the potential to be affected by the rule as a consignee. Analysis of a sample of consignees of shipments using type 86 entry for one day in 2023 demonstrates that 92 percent of businesses in the sample qualify as small.

4. A description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed rule would add a reporting requirement to the basic entry process beyond the proposed requirements described in the ELVS NPRM. Under this rule, the 10-digit HTSUS classification would need to be reported with the entry filing for each product in a basic entry. The 10-digit HTSUS classification reporting requirement is already proposed for enhanced entry in the ELVS NPRM. Any small entity that would import a low-value shipment subject to specified trade or national security actions through basic entry in the absence of this rule would be affected by this new requirement. This would include both small businesses and individual consumers. Reporting the HTSUS codes requires the ability to determine the merchandise's HTSUS codes. We expect most importers to hire a licensed customs broker to determine the HTSUS codes and file the entry.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

This proposed rule would not conflict with any relevant Federal rules. This NPRM does, however, propose amendments to another NPRM's proposed amendments. The ELVS NPRM proposes the creation of a new entry process for entering low-value shipments, referred to as the "enhanced entry process," which would allow CBP to target high-risk shipments more effectively. The ELVS NPRM also proposes revisions to the current process for entering low-value shipments cleared off the manifest, referred to as the "basic entry process," to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry. For more information about the ELVS NPRM and its effects, please see *regulations.gov* for the rule and the accompanying regulatory analysis.

6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

In addition to the preferred regulatory alternative (the proposed rule), CBP also considered two other alternatives.

- First, CBP considered a more stringent alternative where all shipments except for bona fide gifts under 19 U.S.C. 1321(a)(2)(A) would be prohibited from claiming the administrative exemption. Although this alternative is not modeled in this analysis, CBP anticipates the incremental welfare loss and gain in tariff revenue under this alternative would be greater than those under the proposed rule because more shipments would be affected. Therefore, this alternative has the potential to increase impacts on small entities.
- Second, CBP considered an alternative identical to the proposed rule but with an additional requirement that HTSUS codes be required for postal shipments entered by USPS. This alternative is not feasible because the collection of HTSUS codes in the postal environment is currently restricted by U.S. obligations under the Universal Postal Union. Therefore, this alternative would not meet the stated objectives of the proposed rule.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB). The collection of information contained in this proposed rule, will be submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act (PRA). The public can direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Customs and Border Protection. Such comments can be submitted in the regulatory docket for this proposed rule.

This rule, if finalized, would make low-value shipments subject to specified trade or national security actions ineligible for the administrative exemption, resulting in a change to OMB-approved collection 1651–0024 beyond the changes proposed in the Entry of Low-

Value Shipments NPRM. Under the changes to the information collection in that NPRM, basic entries do not have a time burden as they have no data requirement beyond what is submitted on the bill of lading, whereas CBP reports separate burden estimates for Form 3461s filed on paper, Form 3461s and Form 3461ALTs filed electronically, and enhanced entries filed electronically.

The proposed rule would require all entries using the basic entry process (as described in the ELVS NPRM) to provide a 10-digit HTSUS code to facilitate CBP's ability to confirm eligibility for the administrative exemption. Shipments found ineligible would need to refile under formal or other type of informal entry to enter the merchandise (excluding enhanced or basic entry), leading to a decrease in both basic and enhanced entries. Because the HTSUS code will be required for all shipments entered using the basic or enhanced entry process (subject to waiver in certain circumstances, as detailed in the Entry of Low-Value Shipments NPRM), there is less of a difference in the filing requirements between basic and enhanced entries, so we expect some basic entries to shift to enhanced entries. As a result, we will see a change in the number of responses for Form 3461, 3461ALT; Excluding Enhanced, and enhanced entries. CBP does not expect a change in the number of respondents as a result of this rule.

As low-value shipments subject to specified trade or national security actions are made ineligible for the administrative exemption, importers will have to file entry under formal or other type of informal entry (excluding enhanced or basic entry) and fill out Form 3461, 3461ALT (excluding enhanced). As low-value shipments shift away from basic or enhanced, CBP and brokers expect them to reconsolidate into larger shipments. CBP does not know the level of consolidation that will occur, and it is not estimated in the main analysis of this rulemaking, but subject matter experts in the trade community that CBP interviewed as part of the economic analysis report that they expect enough consolidation to occur that this rule will not result in additional time burden for the public and that it may even result in time savings. In keeping with that information, CBP is adjusting its estimates of the filings to reflect a level of consolidation at which the time burden to the public breaks even as a result of this rule. CBP will revisit these estimates when it renews this information collection. Upon finalization of this proposed rule, OMB-approved collection 1651–0024 will be revised to reflect the increased burden hours as follows:

Paper Only Entry/Immediate Delivery Form 3461

Estimated Number of Respondents: 1,669.
Estimated Number of Total Annual Responses: 33,923.
Estimated Time per Response: 0.25 hours (15 minutes).
Estimated Total Annual Burden Hours: 8,481.

ACE Cargo Release Electronic Submission

Form 3461 and 3461ALT Excluding Enhanced Entry

Estimated Number of Respondents: 6,580.
Estimated Number of Total Annual Responses: 23,027,005.
Estimated Time per Response: 0.17 hours (10 minutes).
Estimated Total Annual Burden Hours: 3,837,834.

Enhanced Entry

Estimated Number of Respondents: 535.
Estimated Number of Total Annual Responses: 242,230,193.
Estimated Time per Response: 0 hours (0.0007 minutes).
Estimated Total Annual Burden Hours: 2,826.

F. National Environmental Policy Act

DHS and its components analyze actions to determine whether the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4321 *et seq.,* applies to these actions and, if so, what level of NEPA review is required. 42 U.S.C. 4336. DHS's Directive 023–01, Revision 01 and Instruction Manual 023–01–001–01, Revision 01 ("Instruction Manual 023–01–001–01") establish the procedures that DHS uses to comply with NEPA and the Council on Environmental Quality ("CEQ") regulations for implementing NEPA, 40 CFR parts 1500 through 1508.[57]

Federal agencies may establish categorical exclusions for categories of actions they determine normally do not significantly affect the quality of the human environment and, therefore, do not require the preparation of an Environmental Assessment or Environmental Impact Statement. 42 U.S.C. 4336e(1); *see also* 40 CFR 1501.4, 1507.3(c)(8), 1508.1(e). DHS has established categorical exclusions, which are listed in Appendix A of its Instruction Manual

[57] CBP is aware of the November 12, 2024 decision in *Marin Audubon Society* v. *Federal Aviation Administration,* No. 23–1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, CBP has nonetheless elected to follow those CEQ regulations, in addition to DHS's Directive and Instruction Manual, to meet the agency's obligations under NEPA, 42 U.S.C. 4321 *et seq.*

023–01–001–01. Under DHS's NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

DHS has analyzed this action under Directive 023–01 and Instruction Manual 023–01–001–01. DHS has made a determination that this rulemaking action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. First, this proposed rule clearly fits within the Categorical Exclusions A3(a) and A3(d) of DHS's Instruction Manual 023–01–001–01, Appendix A, for the promulgation of rules of a "strictly administrative or procedural nature" and rules that "interpret or amend an existing regulation without changing its environmental effect," respectively. The proposed rule would create a new process for entering low-value shipments, allowing CBP to target high-risk shipments more effectively. The proposed rule would also revise the current process for entering low-value shipments to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry of low-value shipments and bona-fide gift. Second, this NPRM is not part of a larger action. Third, this NPRM presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, a more detailed NEPA review is not necessary. DHS seeks any comments or information that may lead to the discovery of any significant environmental effects from this NPRM.

Signing Authority

In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions. This regulation is being issued in accordance with DHS Directive 07010.3, Revision 03.2, which delegates to the Commissioner of CBP the authority to prescribe and approve/ sign regulations related to customs revenue functions. Pete Flores, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects

19 CFR Part 10

Bonds, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 128

Administrative practice and procedure, Freight, Reporting and recordkeeping requirements.

19 CFR Part 143

Reporting and recordkeeping requirements.

Proposed Amendments to the CBP Regulations

For the reasons stated above in the preamble, CBP proposes to amend 19 CFR parts 10, 128, and 143 as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 4513.

* * * * *

■ 2. Amend § 10.153 by adding paragraph (j);

The addition reads as follows:

§ 10.153 Conditions for exemption.

* * * * *

(j) The exemption provided for in § 10.151 is not to be allowed with respect to imported merchandise covered in an action imposing additional duties pursuant to either Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), or Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*).

* * * * *

PART 128—EXPRESS CONSIGNMENTS

■ 3. The general authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

■ 4. Amend § 128.21 by revising paragraph (a)(4)(ii) to read as follows:

§ 128.21 Manifest requirements.

(a) * * *

(4) * * *

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in § 128.24, except for merchandise eligible to pass free of duty and tax as provided in § 128.24(f) and entered under § 143.23(k) of this chapter.

* * * * *

PART 143—SPECIAL ENTRY PROCEDURES

■ 5. The general authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

■ 6. Amend § 143.23 by adding paragraph (k)(9) to read as follows:

§ 143.23 Form of entry.

* * * * *

(k) * * *

(9) The 10-digit classification of the merchandise in Chapters 1–97 (and additionally in Chapter 99, if applicable) of the Harmonized Tariff Schedule of the United States (HTSUS), if entering merchandise meeting the requirements of 19 U.S.C. 1321(a)(2)(C) and § 10.151.

* * * * *

Robert F. Altneu,
Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

WITHDRAWAL OF PROPOSED REVOCATION OF SIX RULING LETTERS, PROPOSED MODIFICATION OF TWO RULING LETTERS, AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF METAL AND RUBBER AUTOMOTIVE AIR SPRINGS AND SUSPENSION BUSHINGS

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Withdrawal of notice of proposed revocation of six ruling letters, proposed modification of two ruling letters, and proposed revocation of treatment relating to the tariff classification of metal and rubber automotive air springs and suspension bushings.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), Customs and Border Protection (CBP) proposed to revoke six ruling letters and modify two ruling letters relating to the tariff classification of metal and rubber automotive air springs and suspension bushings under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 58, No. 46, on November 20, 2024. Two comments were received. After further review, CBP has determined that the subject revocations and modifications, as proposed, are not appropriate. Therefore, CBP is withdrawing its proposed action.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at *suzanne.kingsbury@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 58, No. 46, on November 20, 2024, in which CBP proposed to revoke or modify the following New York Ruling Letters (NYs):

- NY N303345, NY N303352, and NY N303355 (all dated March 28, 2019), with respect to the tariff classification of metal and rubber automotive air springs in heading 4016, HTSUS, specifically in subheading 4016.99.55, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other."
- NY N273173 (dated March 15, 2016), NY N302641 (dated February 22, 2019), and NY N300207 (dated September 5, 2018, and excluding part #T920H) with respect to metal and rubber suspension bushings in subheading 4016.99.30, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber."
- NY 811465 (dated July 7, 1995), with respect to metal and rubber bushings under subheading 4106.99.35, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber."
- NY N165423 (dated June 7, 2011), with respect to only metal and rubber elastomeric bushings in either subheading 4016.99.30, HTSUS, or 4016.99.55, HTSUS, and metal and rubber hydraulic bushings in subheading 8487.90.00, HTSUS, which provides for "[M]achinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter: Other."

In the November 20, 2024 notice, CBP proposed to classify the above metal and rubber automotive air springs and suspension bushings in heading 8708, HTSUS, specifically subheading 8708.99.55, HTSUS, which provides for "[P]arts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other." Upon further consideration of the matter, CBP is withdrawing its proposed revocation and modification of NY N303345, NY N303352, NY N303355, NY N273173, NY N302641, NY

811465, NY N165423 and NY N300207, in order to further consider the tariff classification of metal and rubber automotive air springs and suspension bushings.

Yuliya A. Gulis,
Director
Commercial and Trade Facilitation Division

RECEIPT OF APPLICATION FOR "LEVER-RULE" PROTECTION

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice of receipt of application for "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Energizer Brands LLC ("Energizer") seeking "Lever-Rule" protection for the federally registered and recorded "Energizer" trademark.

FOR FURTHER INFORMATION CONTACT: Suzanne Schultz, Intellectual Property Enforcement Branch, Regulations & Rulings, (202) 325–1989.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Energizer seeking "Lever-Rule" protection for its alkaline batteries and its coin batteries. Protection is sought against importations of Energizer alkaline batteries intended for sale outside the United States in the countries of Albania, Armenia, Australia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Comoros, Croatia, Czech Republic, Denmark, Finland, France, French Guyana, Georgia, Germany, Greece, Guadeloupe, Hong Kong, Hungary, Ireland, Israel, Italy, Kazakhstan, Korea, Kuwait, Latvia, Lithuania, Macedonia, Maldives, Malta, Martinique, Mongolia, Netherlands, Norway, Poland, Qatar, Republic of Moldova, Reunion, Romania, San Marino, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, St. Pierre and Miquelon, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, Uzbekistan, and Vietnam that bear the "Energizer" (U.S. Trademark Registration No. 1,502,902, CBP Recordation No. TMK 01–00374) trademark.

Additionally, protection is sought against importations of Energizer coin batteries intended for sale outside the United States in the countries of Africa, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Bulgaria, Cameroon, Chile, China, Colombia, Congo, Costa Rica, Croatia, Denmark, Dominican Republic, Djibouti, Ecuador, Egypt, El Salvador, Fiji, Finland, France, French Polynesia, French Guyana, Gabon, Georgia, Germany, Ghana, Greece, Guadelupe, Guam, Honduras, Hong Kong, Hungary, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Martinique, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Namibia, Netherlands, New Calcedonia, New Zealand, Nigeria, North Macedonia, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Puerto Rico, Qatar, Republic of Moldova, Reunion, Romania, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, South Africa, South Korea, Spain, St. Pierre and Miquelon, Sweden, Switzerland, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Uzbekistan, Venezuela, Vietnam, Zambia, and Zimbabwe that bear the "Energizer" (U.S. Trademark Registration No. 1,502,902, CBP Recordation No. TMK 01–00374) trademark.

In the event that CBP determines that the batteries under consideration are physically and materially different from the batteries authorized for sale in the United States, CBP will publish a notice in the Customs Bulletin, pursuant to 19 CFR 133.2(f), indicating that the above-referenced trademarks are entitled to "Lever-Rule" protection with respect to those physically and materially different batteries.

Dated: January 17, 2024

Alaina L Van Horn

U.S. Court of International Trade

Slip Op. 25–06

HYUNDAI STEEL COMPANY, Plaintiff, v. UNITED STATES, Defendant, and SSAB ENTERPRISES LLC and NUCOR CORPORATION, Defendant-Intervenors.

DONGKUK STEEL MILL CO., LTD., Plaintiff, v. UNITED STATES, Defendant, and NUCOR CORPORATION, Defendant-Intervenor.

Before: M. Miller Baker, Judge
Court No. 22–00029
Court No. 22–00032

[The court sustains Commerce's redetermination.]

Dated: January 16, 2025

Brady W. Mills, *et al.*, Morris, Manning & Martin, LLP, Washington, DC, on the comments for Hyundai Steel Company.

Jeffrey M. Winton and *Vi N. Mai*, Winton & Chapman PLLC, Washington, DC, on the comments for Dongkuk Steel Mill Co., Ltd.

Brian M. Boynton, Principal Deputy Assistant Attorney General; *Patricia M. McCarthy*, Director; *L. Misha Preheim*, Assistant Director; and *Elizabeth Anne Speck*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC, on the comments for Defendant. Of counsel for Defendant was *Jared M. Cynamon*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, Washington, DC.

Alan H. Price, *Christopher B. Weld*, *Derick G. Holt*, and *Paul A. Devamithran*, Wiley Rein LLP, Washington, DC, on the comments for Nucor Corporation.

OPINION

***Baker*, Judge:**

These countervailing duty cases involving South Korea's greenhouse gas regulatory system return from the Department of Commerce. According to the agency's original determination, that country's provision of 100 percent of carbon trading units—things with economic value—to some emitters, including Plaintiff Hyundai in Case 22–29, is a countervailable subsidy when others receive only 97 percent.

To so conclude, Commerce needed to find that "(1) [the South Korean] government provide[d] a financial contribution (2) to a specific industry and (3) a recipient within the industry receive[d] a benefit as a result of that contribution." *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1369 (Fed. Cir. 2014) (citing 19 U.S.C. § 1677(5)(B)); *see also* 19 U.S.C. § 1677(5)(A).

In its previous decision, the court sustained the Department's affirmative findings on the first and third of those elements. *See Hyundai Steel Co. v. United States*, Ct. Nos. 22–00029 and 22–00032, Slip Op. 23–182, at 10–11 (financial contribution), 11–13 (benefit), 2023 WL 8715732, at **4–5 (CIT Dec. 18, 2023). As to the second (specificity), however, the court found the agency's explanation conclusory and remanded. *See id.* at 20–21, 2023 WL 8715732, at **7–8.[1]

On redetermination, Commerce explained its finding that the provision of an extra three percent of trading units to only some carbon emitters is specific. As explained below, the court sustains that conclusion.

I

These cases involve what the Tariff Act of 1930, as amended, calls a "domestic subsidy." 19 U.S.C. § 1677(5A)(D).[2] Such subsidies are specific when they are "narrowly focused" and "provided to or used by discrete segments of an economy." *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act* (SAA), H.R. Rep. No. 103–316, vol. 1, at 930, 1994 U.S.C.C.A.N. 4040, 4242.[3] But "government assistance that is both generally available and widely and evenly distributed throughout the jurisdiction of the subsidizing authority is not an actionable subsidy." SAA at 913, 1994 U.S.C.C.A.N. at 4230.

This test "function[s] as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy." *Id.* at 929, 1994 U.S.C.C.A.N. at 4242. Thus, "a tax credit for expenditures on capital investment" that is "available to all industries and sectors" is not specific. *Id.* at 929–30, 1994 U.S.C.C.A.N. at 4242 (quoting *Carlisle Tire & Rubber Co. v. United States*, 564 F. Supp. 834, 838 (CIT 1983) (Maletz, J.));[4] *see also id.* at 930, 1994 U.S.C.C.A.N. at 4242 ("The specificity test" precludes imposing countervailing duties where a subsidy enjoys "widespread availability *and use* . . . throughout an economy.") (emphasis in original).

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[1] Dongkuk's companion action, Case 22–32, rises or falls with Hyundai's. *See* Slip Op. 23–182, at 8 n.1, 2023 WL 8715732, at *3 n.1. Docket citations in this opinion refer to the latter case.

[2] In addition to domestic subsidies, the statute recognizes "export" and "import substitution" subsidies. *See id.* § 1677(5A)(B), (C). All ensuing references to "subsidy" in this opinion mean a domestic subsidy.

[3] The SAA is an "authoritative expression" of the statute's meaning. 19 U.S.C. § 3512(d).

[4] The SAA characterizes *Carlisle* as "the leading case" for purposes of identifying specificity. *Id.*

Subsidies are specific "as a matter of law" (de jure) "[w]here the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry." 19 U.S.C. § 1677(5A)(D)(i).[5] A "corollary" provision, SAA at 930, 1994 U.S.C.C.A.N. at 4243, states that a subsidy is not de jure specific when the relevant foreign agency or law

> establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy . . . if—
>
> (I) eligibility is automatic,
>
> (II) the criteria or conditions for eligibility are strictly followed, and
>
> (III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

19 U.S.C. § 1677(5A)(D)(ii).

The statute defines "objective criteria or conditions" as ones "*that are neutral and that do not favor one enterprise or industry over another*." *Id*. (emphasis added). They must be "economic in nature and horizontal in application, such as the number of employees or the size of the enterprise." SAA at 930, 1994 U.S.C.C.A.N. at 4243. Provided that the relevant benchmarks are agnostic as to industry or sector type, "a subsidy would not be deemed to be de jure specific merely because it was bestowed pursuant to certain eligibility criteria." *Id*.

In short, a subsidy is de jure specific when "a foreign government expressly limits access . . . to a sufficiently small number of enterprises, industries[,] or groups thereof," *id*., whether by company names, industry types, or discriminatory criteria. There is no "precise mathematical formula for determining when the number of enterprises or industries eligible for a subsidy is sufficiently small so as to properly be considered specific." *Id*. "Commerce can only make this determination on a case-by-case basis." *Id*.

Even if not de jure specific, a subsidy may be specific "as a matter of fact" (de facto) if "one or more" enumerated factors "exist." 19 U.S.C. § 1677(5A)(D)(iii). Those factors are whether the "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number"; "[a]n enterprise or industry is a

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[5] For these purposes, "enterprise or industry" "includes a group of such enterprises or industries." *Id*. § 1677(5A)(D).

predominant user" or "receives a disproportionately large amount of the subsidy"; and in practice the discretionary award of the subsidy "indicates that an enterprise or industry is favored over others." *Id.* § 1677(5A)(D)(iii)(I)–(IV).[6]

II

On remand, Commerce explained that the South Korean Ministry of Environment imposes "international trade intensity" and "production cost" conditions "in an explicit manner to certain industries or 'subsectors.'" Appx16462. "Such an express, legal limitation on eligibility for the additional three percent . . . allocation" is de jure specific. *Id.*

Elaborating, the Department observed that the South Korean greenhouse gas regulatory program does not apply to every industry in that country. *Id.* Instead, it "is limited to a subset of industries," carbon emitters. *Id.*[7] And only a part of that subset is eligible for the three percent unit bonus—those entities "that fulfilled the same trade intensity and production cost criteria used by" the European Union and California "in implementing their emissions trading system." Appx16463.

The Department found that these standards "are not horizontal in application and, thus, are not neutral . . . ." Appx16466. Unlike "examples of neutral criteria in the SAA (*i.e.*, the number of employees or size of the enterprise)," the production cost factor "inherently favor[s] . . . more [greenhouse gas]-intensive (*i.e.*, heavy polluting) production processes" over less pollution-intensive subsectors. *Id.* In the same way, the "international trade intensity" criterion favors businesses that "are more dependent on international markets for sales and/or sourcing" over subsectors that rely less on such markets. *Id.* By singling out "certain types of subsectors," the subsidy is "de jure specific." *Id* (citing 19 U.S.C. § 1677(5A)(D)(i)). The agency observed this conclusion aligns with its previous determinations recognizing that subsidies are de jure specific when they target "enter-

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[6] A third form of domestic subsidies are those that are "regionally specific." *Canadian Solar, Inc. v. United States*, 23 F.4th 1372, 1375 (Fed. Cir. 2022). These are provided by "a central government to particular regions" and by "state and provincial" authorities "to particular regions within" those jurisdictions. SAA at 932, 1994 U.S.C.C.A.N. at 4244; *see also* 19 U.S.C. § 1677(5A)(D)(iv); *Carlisle,* 564 F. Supp. at 838 n.6.

[7] The South Korean greenhouse gas statute applies to "entities" from which the average total amount of annual greenhouse gas emissions during the preceding three-year period is at least 125,000 tons of carbon dioxide equivalents *or* that have a place of business that produced 25,000 tons of CO_2 equivalents during that same three-year period. Appx16462–16463.

prises or industries that perform certain types of activities or use certain types of resources." Appx16473–16474.[8]

III

Hyundai acknowledges that a foreign statute need not name industries for a subsidy to be de jure specific. ECF 75, at 14. But it asserts that the production cost and trade intensity criteria do not "expressly limit access to the subsidy to an enterprise or industry," *id.* (quoting 19 U.S.C. § 1677(5A)(D)(i)), as any entity may satisfy them, *id*. at 9. And according to the company, these conditions are "neutral and . . . do not favor one enterprise or industry over another," *id.* at 6 (quoting 19 U.S.C. § 1677(5A)(D)(ii)), because they "app[ly] to *all* subsectors," *id.* at 24 (emphasis in original).

The company relies heavily on *Hyundai Steel Co. v. United States*, 701 F. Supp. 3d 1398 (CIT 2024) (*Hyundai III)*, where in the context of a different countervailing duty order Commerce similarly found the three-percent subsidy de jure specific.[9] As here, the Department reasoned that production cost and trade intensity criteria were proxies for the heaviest polluters and most trade-reliant entities. 701 F. Supp. 3d at 1411. The court held that this "rationale merely repackage[d] the language of the criteria into a statement that certain subsectors are favored." *Id*. at 1412. "Converting the language of the criteria into subsector descriptors is insufficient to demonstrate that a subsidy may not operate throughout the economy." *Id*.[10]

The government "respectfully disagree[s]" with *Hyundai III*. ECF 78, at 26. It argues the court should instead follow *BGH Edelstahl Siegen GmbH v. United States*, which held that the EU's cap-and-trade scheme was de jure specific because it provided a subsidy to a subset of regulated entities based on their "risk of carbon leakage."

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[8] The Department also noted that the South Korean greenhouse gas regulatory program applies to 63 subsectors. Appx16467. Of those, 37 receive the subsidy. *Id*. Nearly all "are included because they satisfy the trade intensity criteria." *Id*. These subsectors "are related to 'iron and steel,' 'manufacture of semiconductors,' 'manufacture of basic chemicals,' 'manufacture of aircraft,' and a variety of other internationally-oriented manufacturing subsectors." *Id*. The remainder "qualify based on the production cost criteria, including 'group energy' and 'waste treatment.'" Thus, only the "trade and/or emission intensive subsectors" are eligible. *Id*. In contrast, the ineligible subsectors "cover[ ] a broader spectrum of manufacturing groupings in addition to a broad set of service industries, such as 'electricity,' 'telecommunications,' 'computer programming,' 'insurance,' and 'hospital activities.'" *Id*.

[9] *Hyundai III* involved a countervailing duty order on hot-rolled steel. *Id.* at 1401. The one here covers certain steel plate. Appx16457.

[10] As here, *see* note 8, in *Hyundai III* Commerce also relied on the list of qualifying subsectors to find de jure specificity. *See* 701 F. Supp. 3d at 1412. The court held that "[t]hese considerations are [only] relevant to a de facto specificity analysis." *Id*. (citing 19 U.S.C. § 1677(5A)(D)(iii)).

600 F. Supp. 3d 1241, 1264 (CIT 2022). In so holding, *BGH* apparently reasoned that this criterion was not neutral for purposes of 19 U.S.C. § 1677(5A)(D)(ii).

Recall the relevant first principles. Absent statutory or regulatory language "expressly limit[ing] access to the subsidy to an enterprise or industry" by company name or industry type, 19 U.S.C. § 1677(5A)(D)(i), eligibility standards are a necessary, but not sufficient, condition to establish de jure specificity. *See* SAA at 930, 1994 U.S.C.C.A.N. at 4243 (stating that a subsidy is not de jure specific "merely because it [is] bestowed pursuant to certain eligibility criteria"). The question in such cases is whether the conditions "are neutral and . . . do not favor one enterprise or industry over another." 19 U.S.C. § 1677(5A)(D)(ii).

As Commerce has repeatedly and correctly recognized, *see* Appx16474–16475, metrics that select enterprises based on the substantive character of their operations—whether their inputs, outputs, customers, or externalities—are not neutral. That's because they're not "economic in nature and horizontal in application, such as the numbers of employees or the size of the enterprise." SAA at 930, 1994 U.S.C.C.A.N. at 4243. Here, as the Department explained on remand, the South Korean regulatory program facially limits the subsidy to entities that are the heaviest carbon emitters, the most dependent upon international trade, or both. Appx16466. Because a company's eligibility thus turns on what it *does*, the criteria are not content-neutral, as it were. *Cf. Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (stating that "even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech'").

Hyundai's argument that emissions and international trade criteria are neutral because they "app[ly] to *all* subsectors," ECF 75, at 24 (emphasis in original), is wordplay. Of course selection standards *apply* universally. That doesn't mean they're *evenhanded* for countervailing duty purposes. Consider Judge Maletz's example of "a tax credit for expenditures on capital investment." *Carlisle*, 564 F. Supp. at 838. Such a credit would be neutral if eligibility were based on company revenues or employee head count. But if eligibility turned on emissions intensity or export-market dependency, the credit would discriminate according to operational characteristics and so be de jure specific.

The court thus agrees with *BGH* and—like the government—respectfully disagrees with *Hyundai III*. In both cases, subsidy eligibility turned on the nature of an enterprise's operations and was therefore de jure specific. The latter decision characterized the Department's analysis as "[c]onverting the language of the criteria into subsector descriptors . . . ." 701 F. Supp. 3d at 1412. But what the agency did was to describe the substantive industry attributes that the criteria pick. Selection on such an impermissible basis is precisely what makes the subsidy discriminatory rather than neutral because it "favor[s] one enterprise or industry over another." *See* 19 U.S.C. § 1677(5A)(D)(ii).

Finally, it is of no moment that Commerce went further than needed by comparing the numbers of ineligible and eligible subsectors. *See* note 8. Insofar as these considerations are only relevant to a de facto specificity analysis as *Hyundai III* found, *see* 701 F. Supp. 3d at 1412, this merely demonstrates that a de jure– specific subsidy is also necessarily de facto–specific in its operation.[11] At worst this was harmless error.

* * *

The South Korean greenhouse gas program provides a subsidy, based not on company name or industry type, but rather on an entity's operational characteristics. Commerce's original decision simply labeled those criteria as de jure specific without any meaningful discussion. On remand, the Department explained that operational characteristics are not neutral eligibility standards. The court accordingly sustains the agency's redetermination. Separate judgments will enter in both actions. *See* USCIT R. 58(a).

Dated: January 16, 2025
New York, NY

/s/ M. Miller Baker
JUDGE

[11] A de facto–specific subsidy, however, is not necessarily de jure specific.

Slip Op. 25–07

KG DONGBU STEEL CO., LTD., DONGBU STEEL CO., LTD., and DONGBU INCHEON STEEL CO., LTD., Plaintiffs, v. UNITED STATES, Defendant, and NUCOR CORPORATION and STEEL DYNAMICS, INC., Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge
Court No. 22–00047

[Sustaining the U.S. Department of Commerce's *Final Results of Redetermination Pursuant to Court Remand* in the countervailing duty review of certain corrosion-resistant steel products from the Republic of Korea.]

Dated: January 17, 2025

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Claudia Burke, Assistant Director, *Elizabeth Speck*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C. With them on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel on the brief was *Jack Dunkelman*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

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OPINION AND ORDER

Choe-Groves, Judge:

Plaintiffs KG Dongbu Steel Co., Ltd. ("KG Dongbu Steel"), Dongbu Steel Co., Ltd. ("Dongbu Steel"), and Dongbu Incheon Steel Co., Ltd. (collectively, "Plaintiffs" or "KG Dongbu") filed this action challenging the U.S. Department of Commerce's ("Commerce") fourth administrative review of *Certain Corrosion-Resistant Steel Products from the Republic of Korea* ("*Final Results*"), 87 Fed. Reg. 2759 (Dep't of Commerce Jan. 19, 2022) (final results and partial rescission of countervailing duty administrative review; 2019), and the accompanying Issues and Decision Memorandum for the Final Results and Partial Rescission of the 2019 Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the

Republic of Korea ("IDM"), PR 213.[1] In *KG Dongbu Steel Co., Ltd. v. United States* ("*KG Dongbu II*"), 48 CIT __, 695 F. Supp. 3d 1338 (2024), the Court remanded the case to Commerce for a second time for reconsideration and further discussion. *KG Dongbu II*, 48 CIT at __, 695 F. Supp. 3d at 1356–57. Now before the Court is Commerce's Final Results of Redetermination Pursuant to Court Remand ("*Second Remand Redetermination*"). Commerce's Final Results Redetermination Pursuant Ct. Remand, ECF Nos. 76–1, 77–1; 2PRR 5. For the following reasons, the Court sustains Commerce's Second Remand Redetermination.

ISSUES PRESENTED

The Court reviews the following issues:

1. Whether Commerce's determination that the first through third debt-to-equity restructurings did not provide a countervailable benefit to KG Dongbu is supported by substantial evidence and in accordance with law;
2. Whether Commerce's determination that the issue whether benefits from the debt-to-equity restructurings passed through to KG Dongbu Steel despite a change in ownership is moot;
3. Whether Commerce's calculations of the uncreditworthy benchmark rates are supported by substantial evidence; and
4. Whether Commerce's calculation of the unequityworthy discount rate is supported by substantial evidence.

BACKGROUND

The Court presumes familiarity with the facts and procedural history of this case and recites the facts relevant to the Court's review of the *Second Remand Redetermination*. *See KG Dongbu II*, 48 CIT at __, 695 F. Supp. 3d at 1342–44; *KG Dongbu Steel Co., Ltd. v. United States* ("*KG Dongbu I*"), 47 CIT __, __, 648 F. Supp. 3d 1353, 1356 (2023).

Commerce published its countervailing duty order on July 25, 2016. *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China*, 81 Fed. Reg. 48,387 (Dep't of Commerce July 25, 2016) (countervailing duty order). Commerce initiated an administrative review of the countervailing duty order on certain corrosion-resistant steel products from the Republic

[1] Citations to the administrative record reflect the public record ("PR"), public remand record ("PRR"), and second public remand record ("2PRR") numbers filed in this case, ECF Nos. 44, 71, 87.

of Korea ("Korea") for the period of January 1, 2019 to December 31, 2019 and selected KG Dongbu and Hyundai Steel Company as mandatory respondents. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 Fed. Reg. 54,983, 54,990–91 (Dep't of Commerce Sept. 3, 2020); *Final Results*, 87 Fed. Reg. at 2760.

Commerce issued the preliminary results of the administrative review, in which Commerce calculated a 10.52% subsidy rate for KG Dongbu. *Certain Corrosion-Resistant Steel Products from the Republic of Korea* ("*Preliminary Results*"), 86 Fed. Reg. 37,740 (Dep't of Commerce July 16, 2021) (preliminary results of countervailing duty administrative review; 2019); Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2019: Certain Corrosion-Resistant Steel Products from the Republic of Korea ("PDM"), PR 173. Commerce issued the *Final Results* of the administrative review, in which Commerce calculated a 10.51% subsidy rate for KG Dongbu and assigned the same rate to non-selected companies. *Final Results*, 87 Fed. Reg. at 2760.

On appeal, Plaintiffs challenged: (1) Commerce's determination that the first through third debt-to-equity restructurings provided a countervailable subsidy; (2) Commerce's determination that the sale of Dongbu Steel was not arm's length for fair market value; (3) Commerce's calculation of the uncreditworthiness benchmark for purposes of measuring the benefit from KG Dongbu's restructured long term loans and bonds; and (4) Commerce's calculation of the unequityworthy discount rate for purposes of measuring the benefits from the equity infusions from government-controlled creditors. Pls.' Mot. J. Agency R., ECF Nos. 33, 34; Pls.' Opening Br., ECF Nos. 33–2, 34–2; Reply Br. Pls.' Supp. Mot. J. Agency R., ECF Nos. 40, 41. Defendant United States ("Defendant") and Defendant-Intervenor Nucor Corporation ("Defendant-Intervenor" or "Nucor") argued that the Court should sustain the *Final Results*. Def.'s Resp. Pls.' Mot. J. Agency R., ECF Nos. 35, 36; Def.-Interv.'s Resp. Mot. J. Agency R., ECF Nos. 37, 38, 39.

The Court observed that Commerce had considered the first through third debt-to-equity restructurings in each of the first three administrative reviews of the countervailing duty order. *KG Dongbu I*, 47 CIT at __, 648 F. Supp. 3d at 1358. In each of the three prior administrative reviews, Commerce had determined that the debt-to-equity restructurings did not provide a countervailable benefit to KG Dongbu because private creditors had participated in those debt-to-equity restructurings and had agreed to swap debt for equity on the same terms as the government creditors. *Certain Corrosion-Resistant Steel Products from the Republic of Korea*, 84 Fed. Reg. 11,749 (Dep't of Commerce Mar. 28, 2019) (final results and partial rescission of countervailing duty administrative review; 2015–2016) and accompanying Issues and Decision Memorandum; *Certain Corrosion-Resistant Steel Products from the Republic of Korea*, 85 Fed. Reg. 15,112 (Dep't of Commerce Mar. 17, 2020) (final results of countervailing duty administrative review; 2017) and accompanying Issues and Decision Memorandum; *Certain Corrosion-Resistant Steel Products from the Republic of Korea*, 86 Fed. Reg. 29,237 (Dep't of Commerce June 1, 2021) (final results and partial rescission of countervailing duty administrative review; 2018) and accompanying Issues and Decision Memorandum. Commerce did not conduct an unequityworthiness analysis in any of those first three administrative reviews.

The fourth administrative review also involved a fourth debt-to-equity restructuring. *See* IDM at 15. Commerce determined that the evidence showed that private banks had (1) participated in the three debt-to-equity restructurings at issue, (2) paid the same per share price as the government-controlled policy banks, and (3) purchased a significant percentage of the shares of debt that were converted to equity. Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Analysis Memorandum—Equity Infusions ("Equity Infusions Analysis Memorandum" or "Equity Infusions Analysis Mem."), PR 176; *see also* PDM at 11–12. Commerce thus determined that, pursuant to 19 C.F.R. § 351.507(a)(2)(i), the equity infusions in the fourth debt-to-equity restructuring were inconsistent with usual investment practices of private investors. Equity Infusions Analysis Mem. at 13.

During the fourth administrative review, Commerce re-examined the first three debt-to-equity restructurings, determined that KG Dongbu was unequityworthy at their respective placements, and determined that the restructurings had in fact provided a benefit each time to KG Dongbu, as detailed in the Equity Infusions Analysis Memorandum. *Id.* at 10–13. Commerce determined that the benefits of the first through third debt-to-equity restructurings were countervailable because Commerce previously determined that those debt restructurings satisfied the specificity requirement of countervailability. IDM at 46–47; *see* 19 U.S.C. § 1677(5A).

Upon consideration of Plaintiffs' appeal, this Court concluded that Commerce had a standard practice of not reexamining the countervailability of a respondent's equity infusions absent new information and had not provided a reasonable explanation for departing from that practice, and the Court remanded the *Final Results* for reconsideration or further explanation. *KG Dongbu I*, 47 CIT at __, 648 F. Supp. 3d at 1357–59. This Court reasoned that all the information cited by Commerce regarding the first through third debt-to-equity restructurings was based on existing record evidence that had been thoroughly considered in the previous reviews and that no new information impacted the facts surrounding the fourth debt-to-equity restructuring. Specifically, "the record evidence cited by Commerce as justification for its deviation from its past practice does not deal directly with the first through third debt-to-equity restructurings and is not a sufficient explanation to justify departing from its standard practice." *Id.* at __, 648 F. Supp. 3d at 1359. The fourth administrative review was based on the same record as the first through third reviews, and thus Commerce did not provide a sufficient explanation or cite new substantial evidence to justify departing from the prior three reviews in the fourth administrative review.

The Court remanded for Commerce to reconsider or further explain: (1) its determination that the first through third debt-to-equity restructurings provided a countervailable benefit; (2) its determination that the benefits from the debt-to-equity restructurings "passed through" to Plaintiffs despite the change in ownership; (3) whether Commerce's calculations of the uncreditworthy benchmark rates are supported by substantial evidence; and (4) whether Commerce's calculation of the unequityworthy discount rate is supported by substantial evidence. *Id.* at __, 648 F. Supp. 3d at 1357–61.

Commerce filed its *First Remand Redetermination* maintaining that all of its original determinations were correct. Commerce's Final Results Redetermination Pursuant Ct. Remand ("*First Remand Redetermination*"), ECF Nos. 57–1, 58–1. In summary, Commerce reiterated on remand that Commerce was attempting to fix in the fourth administrative review a "mistake" that it had made in the three prior administrative reviews, but Commerce again failed to cite substantial record evidence or provide an adequate explanation for departing from its prior determinations that the first three debt-to-equity restructurings did not provide countervailable benefits. *Id.* at 18–25. In addition, Commerce explained on remand that it would assess countervailable benefits as a pass-through for the prior three years of review (despite its prior determinations that Commerce would not countervail benefits in the first three years of review), plus countervailable benefits for the fourth year of review, without citing substantial record evidence or providing an adequate explanation for this change in practice. *Id.* at 25–32.

With respect to the *First Remand Redetermination*, the Court held that Commerce's determinations regarding the countervailability of the debt-to-equity restructurings and whether the change in ownership extinguished any alleged subsidies from the first through third debt-to-equity restructurings to KG Dongbu were unsupported by substantial evidence. *KG Dongbu II*, 48 CIT at __, 659 F. Supp. 3d at 1345–53. The Court found further that Commerce's calculations of the uncreditworthiness benchmark and unequityworthy discount rate were arbitrary and inconsistent with the plain language of the applicable regulations. *Id.* at __, 659 F. Supp. 3d at 1353–56. The Court remanded Commerce's *First Remand Redetermination* for Commerce to reconsider its determination or provide additional explanation. *Id.* at __, 659 F. Supp. 3d at 1356–57.

Commerce filed its *Second Remand Redetermination* under protest. *Second Remand Redetermination* at 2. Commerce determined that no benefit was conferred through the first through third debt-to-equity restructurings. *Id.* at 5–6, 15–16. Because no benefit was conferred through the debt-to-equity restructurings, Commerce concluded that the issue whether benefits passed through to KG Dongbu Steel was moot. *Id.* at 8, 16–17. Commerce revised its calculations of the uncreditworthy benchmark interest rates based on a three-year AA-rated Korean won interest rate, the actual duration of each loan, and the default rates for each loan. *Id.* at 10–12, 17–19. Commerce revised its calculation of the unequityworthy discount rate based on a 15-year average useful life. *Id.* at 13–14, 17–19.

Defendant-Intervenor filed Defendant-Intervenor's Comments in Opposition to Second Remand Redetermination. Def.-Interv.'s Comments Opp'n Second Remand Redetermination ("Def.-Interv.'s Br."), ECF Nos. 81, 82. In support of the *Second Remand Redetermination*, Plaintiffs filed Plaintiffs' Comments in Support of the Second Remand Redetermination and Defendant filed Defendant's Response to Comments on Commerce's Second Remand Redetermination. Pls.' Comments Supp. Second Remand Redetermination ("Pls.' Br."), ECF No. 84; Def.'s Resp. Comments Commerce's Second Remand Redetermination ("Def.'s Br."), ECF No. 85.

JURISDICTION AND STANDARD OF REVIEW

The U.S. Court of International Trade has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting the final results in an administrative review of a countervailing duty order. The Court shall hold unlawful any determination found to be unsupported by substantial evidence on the record or otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i). The Court reviews determinations made on remand for compliance with the Court's remand order. *Ad Hoc Shrimp Trade Action Comm. v. United States*, 38 CIT 727, 730, 992 F. Supp. 2d 1285, 1290 (2014), *aff'd*, 802 F.3d 1339 (Fed. Cir. 2015).

DISCUSSION

I. Countervailable Subsidy Overview

A countervailable subsidy exists when a foreign government provides a financial contribution that confers a benefit upon the recipient which is deemed to be specific. 19 U.S.C. § 1677(5) & (5A). For equity infusions, a benefit is conferred if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. 19 U.S.C. § 1677(5)(E)(i); *see also* 19 C.F.R. § 351.507(a)(1) (defining a benefit for equity infusions).

Commerce will consider an equity infusion as being inconsistent with usual investment practice if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares. 19 C.F.R. § 351.507(a)(2)(i). Commerce will not consider private sector investor prices if Commerce concludes that private investor purchases of newly issued shares are not significant. *Id.* § 351.507(a)(2)(iii). In such cases when significant private sector participation does not exist, Commerce will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion. *Id.* § 351.507(a)(3). A determination that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with the usual investment practice of private investors, and, therefore, that a benefit to the firm exists in the amount of the equity infusion. *Id.*; *see also id.* § 351.507(a)(6).

Commerce will consider a firm to have been equityworthy if Commerce determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion took place, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. *Id.* § 351.507(a)(4)(i). In making this determination, Commerce considers the following factors: (A) an objective analysis of the future financial prospects of the recipient firm, (B) current and past indicators of the recipient firm's financial health, (C) rates of return on equity in the three years prior to the government equity infusion, and (D) private investor equity investment into the recipient firm. *Id.* § 351.507(a)(4)(i)(A)–(D). Commerce may, in appropriate circumstances, focus on the equityworthiness of a specific project, rather than the company as a whole. *Id.* § 305.507(a)(4)(i).

II. First Through Third Debt-to-Equity Restructurings

In *KG Dongbu II*, the Court held that Commerce's reversal of its prior determinations that the first through third debt-to-equity restructurings provided no counteravailable benefits was arbitrary and unsupported by record evidence. *KG Dongbu II*, 48 CIT at __, 695 F. Supp. 3d at 1350. The Court explained that "Commerce may not attempt to reverse the countervailability determinations on the first three administrative reviews in this case absent new information to address fraud or mistake of fact" and "may not pass through the purportedly countervailable benefits to the first three years without substantial new evidence to justify such calculations." *Id.* On second remand, Commerce determined that there exists "no other basis on the record to conclude that a benefit was conferred on Dongbu Steel's first through third debt-to-equity infusions." *Second Remand Redetermination* at 6.

Commerce conducted the remand under protest because it "disagree[s] with the Court that benefit cannot be re-evaluated during each [period of review]." *Id.* Defendant-Intervenor raises a similar argument in opposition to the *Second Remand Redetermination* that Commerce has the inherent authority to reconsider its prior determinations, even in the absence of new information. Def.-Interv.'s Br. at 2. In *KG Dongbu II,* the Court acknowledged that Commerce has the authority to reconsider its prior decisions if there is no specific statutory limitation against doing so. *KG Dongbu II*, 48 CIT at __, 695 F. Supp. 3d at 1347 (citing *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1560 (Fed. Cir. 2008)). However, this authority is not absolute and Commerce must provide an explanation for treating similar situations differently and for deviating from its established practices. *Id.* (citing *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001)).

Commerce cites to *PPG Industries, Inc. v. United States* ("*PPG Industries*"), 978 F.2d 1232 (Fed. Cir. 1992), in support of its contention that the U.S. Court of Appeals for the Federal Circuit "has recognized that Commerce can revisit any potential benefits received during the administrative [period of review]." *Second Remand Redetermination* at 6. The reason for Commerce's reliance on this case is not clear. *PPG Industries* considered, in relevant part, whether parties to a suspension agreement received prohibited countervailable subsidies during a period of review. *PPG Indus.*, 978 F.2d at 1237–39. Commerce quotes the language "the relevant inquiry is whether or not [Flatado and Plano] received any benefits during the period of review . . . ." *Second Remand Redetermination* at 6 n.28 (quoting *PPG Indus.*, 978 F.2d at 1237). Commerce ignores the beginning of the quoted sentence that provides the qualifying text: "[b]ecause we are reviewing compliance with the suspension agreement." *PPG Indus.*, 978 F.2d at 1237. Even if not limited to the context of suspension agreements, nothing in *PPG Industries*, or any other case of which the Court is aware, stands for the broad proposition that Commerce has unfettered authority to revise its prior determinations without providing an adequate explanation or citing new evidence as required by *SKF USA Inc. v. United States*, 263 F.3d 1369 (Fed. Cir. 2001).

Defendant-Intervenor challenges the *Second Remand Redetermination*, contending that Commerce failed to address on remand evidence on the record submitted by Defendant-Intervenor that supports a revision of Commerce's prior debt-to-equity determinations. Def.-Interv.'s Br. at 3–5. Specifically, Defendant-Intervenor asserts that it previously raised before Commerce evidence of a Korean Government policy to influence non-government financial institutions that actively support debt restructuring for Korean companies. *Id.* at 3–4. During the investigation, Defendant-Intervenor argued to Commerce that the Korean Government established the United Asset Management Company, Ltd. ("UAMCO") "to achieve financial improvement of struggling companies through a wide range of restructuring programs, including debt restructuring, capital injection, asset sales, corporate reorganization, workouts and liquidation and bankruptcy proceedings." Def.-Interv.'s Comments Advance Prelim. Determination Regarding Dongbu at 21, PR 163 (citing Def.-Interv.'s Comments Dongbu's First Suppl. Questionnaire Resp. at Ex. 26 at 35, PR 110–13). Defendant-Intervenor asserted that KG Dongbu's restructuring was connected to UAMCO's expansion and quoted a statement by a financial institution stating that "the [Korean Government] may from time to time encourage or request the financial institutions in Korea, including us and our subsidiaries, to make investments in, or to provide other forms of financial support to, certain institutions in furtherance of the Government's policy objectives." *Id.* at 22 (citing Def.-Interv.'s Comments Dongbu's First Suppl. Questionnaire Resp. at Ex. 26 at 34). *Id* at 24. Defendant-Intervenor contends that it raised this evidence before Commerce on remand. Def.-Interv.'s Br. at 5.

Commerce "must address significant arguments and evidence which seriously undermines its reasoning and conclusions," but is not required to address every argument or piece of evidence offered by a party. *Altx, Inc. v. United States*, 25 CIT 1100, 1117–18, 167 F. Supp. 2d 1353, 1374 (2001), *aff'd* 370 F.3d 1108, 1116 (Fed. Cir. 2004). On second remand, Commerce explained that it "[found] no other basis on the record to conclude that a benefit was conferred on Dongbu Steel's first through third debt-to-equity infusions." *Second Remand Redetermination* at 6, 16. This suggests that Commerce reviewed the full record on remand to identify any evidence that might support a determination that a benefit was conferred through the debt-to-equity infusions, as the Court instructed in *KG Dongbu II*.

Furthermore, the evidence cited by Defendant-Intervenor does not directly undermine Commerce's determination on second remand. A benefit is conferred "if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made[.]" 19 U.S.C. § 1677(5)(E)(i); *see also* 19 C.F.R. § 351.507(a)(1). The Court observes that Defendant-Intervenor offered the cited evidence to Commerce in support of its argument "that the non-government banks on the creditor committees were entrusted and directed to participate" and that Commerce "should reconsider prior determinations that the non-government banks were 'actual private investors' for the purpose of benchmarking the debt-to-equity swap portion of the restructuring." Def.-Interv.'s Comments Advance Prelim. Determination Regarding Dongbu at 24. Though the evidence identified by Defendant-Intervenor might suggest a general government policy to pressure non-governmental institutions to participate in debt restructuring, the evidence does not directly support a determination that such pressure was actually exerted in KG Dongbu's debt-to-equity restructurings.

The Court presumes that Commerce considered the full record, including all evidence cited by Defendant-Intervenor, and decided to reject such evidence in Commerce's determination. The Court does not conclude that Commerce was required in the *Second Remand Redetermination* to expressly address Defendant-Intervenor's arguments and cited evidence, and the Court will not require Commerce to do so in a third remand redetermination.

In *KG Dongbu II*, the Court remanded Commerce's countervailability determination by stating that "Commerce failed to provide a reasonable explanation and failed to cite new information or a mistake of fact regarding the first three administrative reviews that would warrant reversing Commerce's prior final determinations that the first three debt-to-equity restructurings resulted in no countervailable benefits." *KG Dongbu II*, 48 CIT at __, 695 F. Supp. 3d at 1348. This Court explained that "[t]he only reason for Commerce to re-examine the countervailability of the prior debt-to-equity restructurings is 'new information,' according to [Commerce's] own statements." *Id.* at 1347. Commerce previously stated that it had made a "mistake," and therefore the Court remanded for Commerce to provide further explanation about the new information and the mistake that it had made.

On second remand, rather than providing more detail about the alleged "mistake" and any related "new information" under its own policies, Commerce reversed course and determined that no evidence on the record supported a conclusion that a benefit was conferred by the first through third debt-to-equity restructurings. *Second Remand Redetermination* at 6, 16. Commerce had the choice to either explain its "mistake" or to examine the full record and change its position. Commerce chose the latter approach, and determined that the record evidence did not support countervailability determinations for the first three administrative reviews.

The Court holds that Commerce's second remand redetermination is in accordance with law, supported by substantial evidence, and in accordance with the remand instructions. Accordingly, the Court sustains Commerce's determination that no benefit was conferred in the first through third debt-to-equity restructurings.

III. Pass Through Benefits

On second remand, Commerce determined that because KG Dongbu's first through third debt-to-equity restructurings did not confer a benefit and that there was not a recurring benefit to be allocated during the 2019 administrative review, the issue whether the benefits passed through to KG Dongbu Steel was moot. *Second Remand Redetermination* at 8, 16–17. Plaintiffs support Commerce's determination that the issue is moot. Pls.' Br. at 8–9. No party objects to the determination of mootness. Def.'s Br. at 6; *see also* Def.-Interv.'s Br. The Court agrees that Commerce's determination that no benefit was conferred in the first through third debt-to-equity restructurings renders moot the issue whether a benefit passed through to KG Dongbu Steel. The Court sustains Commerce's determination.

IV. Uncreditworthy Benchmark Rate

On second remand, Commerce reconsidered its calculations of the uncreditworthy benchmark used to calculate the benefits for bonds and loans provided by the Creditor Bank Committee. *Second Remand*

Redetermination at 10–12. In *KG Dongbu II*, the Court explained that "Commerce's regulation and preamble to Commerce's regulations are clear that the default rates should be tied to the term of the loan or, in the case of an equity benefit, to the same period as a non-recurring subsidy[.]" *KG Dongbu II*, 48 CIT at__, 695 F. Supp. 3d at 1356 (citing 19 C.F.R. § 351.524(d)(2); 19 C.F.R. § 351.507(c)).

Commerce identified that the uncreditworthy interest rate formula has four variables, (1) the term of the loan in question "n"; (2) the long-term interest rate paid by a creditworthy company "if"; (3) the probability of default of a creditworthy company in "n" years; and (4) the probability of default of an uncreditworthy company in "n" years. *Second Remand Redetermination* at 10 (citing 19 C.F.R. § 351.505(a)(3)(iii)). In applying this formula, Commerce used the bond and loan template provided by KG Dongbu and explained that:

> [p]ursuant to 19 [C.F.R. §] 351.505(a)(2)(iii), we determined the term of each bond or loan, "n," by identifying the "Date of Loan Receipt" and the loan's "Date of Maturity." To identify the six-year loans and bonds that were restructured in 2019, we identified the new interest rate of the restructured bond or loan (under the labels "Interest Rate Specified in the Loan Agreement" or "Coupon Rate (%)"), the year the loan appeared to be restructured as a "new" loan using the column labelled "Date of Interest Payment," and the "Date of Maturity."

Id. at 11–12. Commerce revised its uncreditworthy benchmark interest rate calculations based on the duration of each bond or loan and applied the calculated interest rates to the bonds and loans that had remaining balances during the period of review. *Id.* at 10–12.

Commerce's recalculation of the uncreditworthy benchmarks is consistent with the Court's remand instructions. No party objects to the calculations. Pls.' Br. at 9–10; Def.'s Br. at 10; *see* Def.-Interv.'s Br. The Court sustains the uncreditworthy benchmark calculations.

V. Unequityworthy Discount Rate

In *KG Dongbu II*, the Court held that 19 C.F.R. §§ 351.507(c) and 351.524(d) require that Commerce "allocate the benefit amount conferred by an equity infusion (a non-recurring subsidy) over the same time period as the non-recurring subsidy" when calculating an unequityworthy discount rate. *KG Dongbu II*, 48 CIT at __, 695 F. Supp. 3d at 1355. On second remand, Commerce recalculated the uncreditworthy discount rate using a 15-year average useful life and the formula for calculating the uncreditworthy interest rate. *Second Remand Redetermination* at 13–14. The recalculated rate was applied to the allocation of KG Dongbu's fourth debt-to-equity restructuring and the subsidy rate for the 2019 period of review was revised. *Id.* at 14.

Commerce's recalculation of the unequityworthy discount rate is consistent with the Court's remand instructions. No party objects to the calculations. Pls.' Br. at 9–10; Def.'s Br. at 10; *see* Def.-Interv.'s Br. The Court sustains the unequityworthy discount rate calculation.

CONCLUSION

For the foregoing reasons, the Court sustains Commerce's *Second Remand Redetermination* as supported by substantial evidence and in accordance with law. Accordingly, it is hereby

ORDERED that *Second Remand Redetermination* is sustained. Judgment will be entered accordingly.

Dated: January 17, 2025
New York, New York

/s/ Jennifer Choe-Groves
Jennifer Choe-Groves, Judge

Slip Op. 25–09

Prysmian Cables and Systems USA, LLC, Plaintiff, v. United States, et al., Defendants.

Before: Stephen Alexander Vaden, Judge
Court No. 1:24-cv-00101

[Granting Defendant's Amended Motion to Partially Dismiss Case.]

Dated: January 22, 2025

Brad S. Keeton, Frost Brown Todd LLP, of Lexington, KY, for Plaintiff Prysmian Cables and Systems USA, LLC.

Kyle S. Beckrich, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for Defendant United States. With him on the brief were *Brain M. Boynton*, Principal Deputy Assistant Attorney General; *Patricia M. McCarthy*, Director; and *Tara K. Hogan*, Assistant Director.

OPINION

Vaden, Judge:

The United States moves to partially dismiss the Amended Complaint filed by Plaintiff Prysmian Cables and Systems USA, LLC (Prysmian). Prysmian claims that the Department of Commerce (Commerce) violated 5 U.S.C. § 706(1) and 5 U.S.C. § 706(2) — both sections of the Administrative Procedure Act — when it denied Prysmian's Section 232 exclusion requests for aluminum imports into the United States. The Government seeks to dismiss all Prysmian's 5 U.S.C. § 706(1) claims and fifteen of Prysmian's seventeen 5 U.S.C. § 706(2) claims. For the reasons set forth below, this Court **GRANTS** the Government's Motion.

BACKGROUND

Section 232 of the Trade Expansion Act of 1962 empowers the President of the United States to impose trade measures when the President determines action "must be taken to adjust the imports of [an] article and its derivatives so that such imports will not threaten to impair the national security." 19 U.S.C. § 1862(c)(1)(A)(ii). On March 8, 2018, President Donald J. Trump invoked Section 232 and imposed a ten percent tariff on aluminum imports, finding that those imports threatened to impair national security. *See Adjusting Imports of Aluminum into the United States*, *Pres. Proc. No. 9,704*, 83 Fed. Reg. 11,619 (Mar. 8, 2018). In his Proclamation, the President directed the Secretary of Commerce to allow exclusions from the tariff for aluminum products not immediately available in the United States in sufficient quality or quantity. *Id.* at 11,619.

Prysmian is a domestic company that imports aluminum to produce conductive cable for electrical power generation, transmission, and distribution. Am. Compl. ¶ 3, ECF No. 16. To continue manufacturing products at its current pace, Prysmian sought exclusions on certain aluminum rods procured from companies in Canada, Bahrain, Russia, the United Arab Emirates, and Argentina. *Id.* ¶¶ 38–45. Between 2018 to 2021, Prysmian submitted seventeen separate exclusion requests. *Id.* ¶ 46. Commerce denied all Prysmian's requests, starting in 2019. *Id.*

On June 7, 2024, Prysmian filed suit in this Court. Compl., ECF No. 2. Prysmian filed its Amended Complaint on September 10, 2024. Am. Compl., ECF No. 16. It alleges that Commerce violated 5 U.S.C. § 706(1) because Commerce unlawfully withheld or unreasonably delayed its decisions on Prysmian's exclusion requests. *Id.* ¶¶ 82–121 (Counts I–VIII). The Amended Complaint further claims Commerce's ultimate denials violated 5 U.S.C. § 706(2) because its actions were arbitrary, capricious, and not in accordance with law. *Id.* ¶¶ 122–69 (Counts IX–XVI).

On October 25, 2024, the Government filed its Amended Motion to Partially Dismiss. Corrected Am. Mot. to Dismiss Case (Def.'s Mot.), ECF No. 21. In its Motion, the Government argues that this Court should partially dismiss Prysmian's Complaint for two reasons. It asserts that 5 U.S.C. § 706(1) does not apply to agency denials. Def.'s Mot. at 4–6, ECF No. 21. The Government argues that the statute describes an agency's failure to act, not its decision to deny a request. *Id.* at 4. According to Commerce, a denial is the "agency's act of saying no to a request," whereas a "failure to act 'is simply the omission of an action without formally rejecting a request.'" *Id.* at 4 (quoting *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004)). Because Commerce denied Prysmian's exclusion requests, Commerce did not fail to act; and Prysmian's claims should be dismissed for failure to state a claim. *Id.* at 6.

Prysmian disagrees. Pl.'s Resp. to Mot. to Partially Dismiss Case (Pl.'s Resp.), ECF No. 23. Plaintiff argues that Commerce failed to act because it did not perform three required actions for each denial. First, Prysmian alleges that Commerce failed to apply mandatory criteria to the facts presented in Prysmian's exclusion requests such as "an assessment of whether domestically produced substitute products ... are immediately available in sufficient quantities to meet the requester's needs ...." *Id.* at 6; *see* 15 C.F.R. § 705, Supp. 1(c)(6). Second, Commerce failed to prepare a specific decision memorandum and only provided a form response. Pl.'s Resp. at 7; *see* 15 C.F.R. § 705, Supp. 1(h)(2)(i). Third, Commerce failed to notify Customs of Prysmian's entitlement to an exclusion under both the Presidential Proclamation's requirements and 15 C.F.R. § 705, Supp. 1(h)(3)(ii). Pl.'s Resp. at 7. Because Commerce did not follow these required steps, Prysmian alleges that Commerce failed to act within the meaning of 5 U.S.C. § 706(1). *Id.* at 7–8.

Next, the Government argues that fifteen of Prysmian's seventeen 5 U.S.C. § 706(2) claims should be dismissed as untimely. Def.'s Mot. at 6–7, ECF No. 21. Defendant notes any claim brought under 28 U.S.C. § 1581(i) is subject to a two-year statute of limitations. *Id.* at 6 (citing 28 U.S.C. § 2636(i)). Because the filing date of the original complaint was June 7, 2024, the claims that accrued between May 4, 2019, to April 6, 2022, are untimely under 28 U.S.C. § 2636(i). *Id.* at 7.

Prysmian believes all seventeen of its exclusion requests are timely. Prysmian agrees it filed its Complaint on June 7, but it argues that Commerce's denial of its exclusion requests is a continuing violation. Pl.'s Resp. at 9–12, ECF No. 23. Because Commerce's "only reasonable conclusion" was to grant the exclusions, "[Commerce] has repeatedly and continuously ... violat[ed] its legal obligations[.]" *Id.* at 11. Alternatively, Prysmian argues that, if the continuing violation doctrine does not apply, the correct statute of limitations is the six-year limitation period under 28 U.S.C. § 2640(a) instead of the two-year period under 28 U.S.C. § 2636(i). *Id.* at 12–13.

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction under 28 U.S.C. § 1581(i). When the specific jurisdictional grants of 28 U.S.C. § 1581(a)–(h) do not apply, then 28 U.S.C. § 1581(i) contains a residual grant of jurisdiction. 28 U.S.C. § 1581(i)(1)(B) grants the Court jurisdiction over "any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for ... tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue." This "'residual' grant of jurisdiction . . . may not be invoked when jurisdiction under another subsection of [Section] 1581 is or could have been available ...." *Sunpreme Inc. v. United States*, 892 F.3d 1186, 1191 (Fed. Cir. 2018). No party challenges Plaintiff's invocation of jurisdiction, and the Court finds no error in Plaintiff's jurisdictional claim. *See Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 127 (1804) ("[I]t [is] the duty of the Court to see that they had jurisdiction, for the consent of the parties could not give it."); *Answers in Genesis of Kentucky, Inc. v. Creation Ministries Int'l., Ltd.*, 556 F.3d 459, 465 (6th Cir. 2009) ("[F]ederal courts have a duty to consider their subject matter jurisdiction in regard to every case and may raise the issue *sua sponte*.").

A Rule 12(b)(6) motion to dismiss for failure to state a claim "is appropriate when the facts asserted by the plaintiff do not entitle [the plaintiff] to a legal remedy." *United Pac. Ins. Co. v. United States*, 464 F.3d 1325, 1327 (Fed. Cir. 2006) (quoting *Boyle v. United States*, 200 F.3d 1369, 1372 (Fed. Cir. 2000)) (internal quotation marks omitted). A plaintiff's factual allegations must be "enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). Dismissal is required when a complaint fails to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). When considering a motion to dismiss, the Court must "accept well-pleaded factual allegations as true and must draw all reasonable inferences in favor of the claimant." *Kellogg Brown & Root Servs., Inc. v. United States*, 728 F.3d 1348, 1365 (Fed. Cir. 2013).

DISCUSSION

Prysmian argues that the Government's Motion is premature because Prysmian can demonstrate that Commerce failed to carry out its legally required duties. Plaintiff also claims that the statute of limitations has not run because Commerce continually violated Prysmian's rights. Even if the continuing violation doctrine does not apply, Prysmian alleges that Commerce used the incorrect statute of limitations. Conversely, the Government argues that Prysmian has failed to state a claim under 5 U.S.C. § 706(1) and that all but two of Prysmian's 5 U.S.C. § 706(2) claims should be dismissed as untimely. This Court agrees with the Government and **GRANTS** its Motion.

I. 5 U.S.C. § 706(1) Claims (Counts I–VIII)

Prysmian claims that Commerce violated 5 U.S.C. § 706(1) when it failed to perform three required steps denying Prysmian's exclusion requests. Pl.'s Resp. at 6–7, ECF No. 23. It argues that Commerce failed to apply mandatory criteria to the facts Prysmian presented, failed to prepare a mandatory memo "responsive" to the exclusion, and failed to notify Customs of Prysmian's entitlement to an exclusion. *Id.* The Government disagrees. Defendant argues that Commerce acted under 5 U.S.C. § 706(1) because a denial is not the same as a failure to act. Def.'s Reply to Mot. to Dismiss (Def.'s Reply) at 2, ECF No. 24. The Government notes that a failure to act "is simply the omission of an action without formally rejecting a request," while a denial "is the agency's act of saying no to a request[.]" *Id.* (quoting *Norton*, 542 U.S. at 63). The Government is correct.

Here, Commerce acted for purposes of the Administrative Procedure Act because Commerce denied Prysmian's exclusion requests. The statute permits a "reviewing court" to "compel an agency action unlawfully withheld or unreasonably delayed ...." 5 U.S.C. § 706(1). Additionally, the Supreme Court has held that "a claim under [Section] 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Norton*, 542 U.S. at 64 (emphasis in original). A denial, therefore, is not an action unlawfully withheld or unreasonably delayed: It is a decision. *See id.* at 63 ("A 'failure to act' is not the same thing as a 'denial.'").

Prysmian does not deny Commerce rendered a decision; it only takes issue with how Commerce did so. Pl.'s Resp. at 6–7, ECF No. 23. Essentially, Prysmian argues that Commerce should have decided in Prysmian's favor. However, the Administrative Procedure Act allows a court to compel agency *action*, not to direct a specific *outcome*. *See* 5 U.S.C. § 706(1) ("A reviewing court shall compel agency *action* ....") (emphasis added); *Norton*, 542 U.S. at 65 ("[A] court can compel the agency to act, but it has no power to specify what the action must be."). Drawing all reasonable inferences in Prysmian's favor, Prysmian does not deny Commerce provided a memorandum and rendered a decision. Pl.'s Resp. at 6–7, ECF No. 23. Whether Commerce acted arbitrarily, capriciously, abused its discretion, or otherwise acted in violation of the law when it made the decision is a question for Section 706(2), not Section 706(1). *Compare* 5 U.S.C. § 706(1) ("The reviewing court shall compel agency action unlawfully withheld or unreasonably delayed ...."), *with* 5 U.S.C. § 706(2) ("The reviewing court shall hold unlawful and set aside agency actions, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law ....").

Prysmian's final objection — Commerce should have notified Customs of Prysmian's exclusion — is only applicable if Commerce granted an exclusion. *See* 15 C.F.R. § 705 Supp. 1(h)(3)(ii). Commerce denied Prysmian's request, and Commerce was not required to notify Customs of Prysmian's non-existent entitlement. *Id.* Once more, Prysmian argues its exclusions should have been granted; and it asks this Court to compel Commerce to do so. Commerce acted when it denied Prysmian's exclusion requests, and this Court cannot compel Commerce to make a specific decision. *See Norton*, 542 U.S. at 66. Therefore, Commerce's request to dismiss all of Prysmian's claims under Section 706(1) of the Administrative Procedure Act is **GRANTED**.

II. 5 U.S.C. § 706(2) Claims (Counts IX–XVI)

Prysmian next argues that all seventeen of its claims that Commerce unlawfully denied its exclusion requests are timely. It makes these claims under Section 706(2) of the Administrative Procedure Act, which does permit the Court to review "agency actions, findings, and conclusions" for compliance with the law. 5 U.S.C. § 706(2). First, Prysmian claims that Commerce's denials are a continuing violation that tolls the two-year statute of limitations. Pl.'s Resp. at 9, ECF No. 23. Second, Prysmian argues in the alternative that Commerce used the incorrect statute of limitations. *Id.* at 12–13, ECF No. 23. The Government responds that there is no continuing violation, and the correct statute of limitations is two years. Def.'s Reply at 8–9, ECF No. 24. The Court once again agrees with the Government.

A. The Two-Year Statute of Limitations

Prysmian's claims regarding its first fifteen exclusion requests accrued more than two years ago. Am. Compl. ¶ 46, ECF No. 16. The applicable statute of limitations for Prysmian's claims bars any claim older than two years. 28 U.S.C. § 2636(i); *Mitsubishi Elecs. Am., Inc. v. United States*, 44 F.3d 973, 977 (Fed. Cir. 1994) (holding that actions brought under 28 U.S.C. § 1581(i) are subject to the two-year statute of limitations found in 28 U.S.C. § 2636(i)); *Stone Container Corp. v. United States*, 229 F.3d 1345, 1348 (Fed. Cir. 2000) (same). To include these older claims, Prysmian argues that the continuing violation doctrine applies. Pl.'s Resp. at 9–12, ECF No. 23. Because Commerce continually violated Prysmian's rights by denying the exclusion requests, Prysmian argues that the statute of limitations has not run on any of its exclusion claims. *Id.* at 12. Unfortunately for Prysmian, there is no continuing violation.

The continuing violation doctrine states that "each time a plaintiff is injured by an act of the [defendant] a cause of action accrues to him to recover damages caused by that act[,] and ... the statute of limitations runs from the commission of the act." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). For the doctrine to apply, the "plaintiff's claim must be inherently susceptible to being broken down into a series of independent and distinct events or wrongs, each having its own associated damages." *Brown Park Estates-Fairfield Dev. Co. v. United States*, 127 F.3d 1449, 1456 (Fed. Cir. 1997). The doctrine "has been held to overcome statutory time bars when it would have been unreasonable to expect the plaintiff to sue at an early stage in a continuing course of conduct." *Bosley v. MSPB*, 162 F.3d 665, 667 (Fed. Cir. 1998). The continuing violation doctrine, however, does not permit a claim that is "based upon a single distinct event, which may have continued ill effects later." *Brown Park*, 127 F.3d at 1456.

Courts have considered the continuing violation doctrine in various factual contexts. *See, e.g.*, *id.* at 1455–59 (analyzing the continuing violation doctrine in a government contracting case and noting that courts have considered it in environmental law, veterans' affairs, contracts, real estate, and employment cases). This Court has also recognized the doctrine at least once. *See Pat Huval Rest. & Oyster Bar, Inc. v. United States*, 32 CIT 232 (2008), *aff'd*, 785 F.3d 638 (2015) (holding that the continuing violation doctrine applied to discriminatory Byrd Amendment payments owed to plaintiff). *But see Ocean Duke Corp. v. United States*, 35 CIT 833 (2011), *aff'd*, 467 Fed. Appx. 893 (Fed. Cir. 2012) (declining to apply the doctrine for claims concerning Commerce's denials on enhanced bonds); *United States v. Complex Mach. Works Co.*, 20 CIT 1080 (1996) (also finding the doctrine does not apply). Although not precedential, *Pat Huval* and *Ocean Duke* are illustrative to help evaluate Prysmian's argument.

In *Pat Huval*, the Byrd Amendment allowed the federal government to distribute proceeds from antidumping and countervailing duty enforcement to domestic companies affected by unfair foreign competition. 32 CIT at 233–34; *see* 19 U.S.C. § 1675c (2000) (repealed 2006). To receive this distribution, the affected domestic company had to be a petitioner or had to have supported a petition leading to an antidumping or countervailing duty order. *Pat Huval*, 32 CIT at 233–34. A domestic restaurant applied to receive a distribution, and Commerce denied its request because the restaurant was not a petitioner or a petition supporter. *Id.* at 234. The restaurant alleged that Commerce's failure to distribute the Byrd funds to the restaurant was unconstitutional viewpoint discrimination as well as a due process and an equal protection violation. *Id.* at 240–41. Because Commerce engaged in these discriminatory practices every year when distributing the funds, the restaurant argued the continuing violation doctrine applied; and this Court could hear claims regarding payments otherwise outside the statute of limitations. *Id.* at 239.

This Court agreed with the restaurant and found that there was a continuing violation. *Id.* at 242. Because receiving Byrd distributions required "express[ing] support" for the petition, the Government impermissibly discriminated "between similarly situated domestic producers based on whether an individual producer was a petitioner or supported the petition." *Id.* at 241. The Byrd Amendment provided for annual payments. *Id.* at 233; *see* 19 U.S.C. § 1675c (2000) (repealed 2006). Thus, the unconstitutional practice created a new cause of action every time payments issued. *Pat Huval*, 32 CIT at 241. Each new payment cycle created a new, independent harm and liability for damages. *Id.* This Court could therefore hear the restaurant's claims under the continuing violation doctrine. *Id.*

Conversely, the Court declined to apply the continuing violation doctrine in *Ocean Duke.* In 2004, Customs created enhanced entry bond requirements for shrimp importers subject to new antidumping duty orders. *Ocean Duke*, 35 CIT at 835. A domestic shrimp importer continued to post import bonds using the pre-2004 rules. *Id.* Customs forced the importer to comply with the new rules, and the importer obtained five separate entry bonds between 2005 and 2008. *Id.* The importer sought multiple times to cancel the bonds, but Customs denied each request. *Id.* at 836. In 2009, however, this Court found Customs' enhanced bond requirements to be arbitrary and capricious. *Id.* (citing *Nat'l Fisheries Inst. v. U.S. Bureau of Customs & Border Prot.*, 33 CIT 1137 (2009)). Afterword, the importer submitted six more bond cancellation requests, which Commerce denied. *Id.* The importer sued, claiming that the statute of limitations on the bonds from 2005 to 2008 had not run because Customs' repeated refusal to cancel the bonds constituted a continuing violation. *Id.* at 838.

This Court disagreed. All the injuries the importer suffered originated from Customs' decision to require the importer to post bonds under the enhanced requirements. It was at that point "all events necessary to state the claim" had occurred. *Id.* (quoting *Mitsubishi Elecs.*, 44 F.3d at 977) (internal quotation marks omitted). The continued ill-effects were not "inherently susceptible to being broken down into a series of independent and distinct events." *Id.* at 839 (quoting *Brown Park*, 127 F.3d at 1456). Not even the importer's repeated attempts to file administrative reconsideration requests served to toll the statute of limitations as there was no legal requirement that the importer file for reconsideration before filing suit. *Id.* at 840. Because all the harms flowed from Customs' initial decision to require the importer to post the bonds, there was no continuing violation; and the two-year statute of limitation applied to prohibit the suit. *Id.*

Here, Prysmian has not suffered a continuing violation. Although the denials may have caused Prysmian continued ill effects, each exclusion denial was "a single distinct event." *Brown Park*, 127 F.3d at 1457; *see also Ocean Duke*, 35 CIT at 839–40. All the facts necessary to state a claim against the Department were present no later than the dates on which Commerce denied each of Prysmian's exclusion requests. The claims accrued at that point, and the limitations clock began to tick. *Ocean Duke*, 35 CIT at 838. The harms of which Prysmian complains are not susceptible to being broken down into independent events with distinct damages. *See id.* at 839. This is not an annual payment scheme like in *Pat Huval*. *Cf.* 32 CIT at 233–34. Once Commerce denied the exclusion requests, there was nothing more for it to do. The denial of the requests was the end of the matter.

Prysmian received its first denial on May 4, 2019. Am. Compl. ¶ 46, ECF No. 16. It could have sued Commerce then. Instead, Prysmian waited five more years until June 2024 to file its Complaint. Compl., ECF No. 2. Because there is no continuing violation, the only claims that fall within the two-year statute of limitations are the final two denials on July 31, 2022, and February 12, 2023. Am. Compl. ¶ 46, ECF No. 16. Absent a mistake by Commerce as to which statute of limitations applies, all but these final two claims must be dismissed.

B. Six-Year Statute of Limitation

Prysmian argues that the correct statute of limitations is 28 U.S.C. § 2640(a), and its assertion relies on a daisy-chain of statutes. First, Prysmian claims that this case arises under the jurisdictional grant in 28 U.S.C. § 1581(i) because it "arise[s] out of a[] law of the United States" related to tariffs imposed for reasons other than raising revenue. Pl.'s Resp. at 12, ECF No. 23. Next, Prysmian notes that the Court's standard of review under 28 U.S.C. § 1581(i) requires that "the Court of International Trade shall review the matter as provided in section 706 of title 5." *Id.* at 13. Finally, because the Court is required to review the matter under 5 U.S.C. § 706, it must employ the statute of limitations "generally used" in Administrative Procedure Act cases, which is 28 U.S.C. § 2401(a). *Id.* That statute provides, "[E]very civil action against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." 28 U.S.C. § 2401(a). Because the Court should use that six-year limitations period, Prysmian claims that all seventeen of its claims are timely.

Creative though its argument may be, Prysmian's narrative runs aground on the shoals of the statute's text. 28 U.S.C. § 2636(i) is plain in its meaning: "A civil action of which the Court of International Trade has jurisdiction under [28 U.S.C. § 1581(i)], ... is barred unless commenced ... within two years after the cause of action first accrues." The Federal Circuit has confirmed the statute's words. *See, e.g.*, *Mitsubishi Elecs.*, 44 F.3d at 977 ("The statute of limitations, however, requires that section 1581(i) actions be brought within two years after accrual of the cause of action."); *Stone Container Corp.*, 229 F.3d at 1348 ("The limitations period for suits brought under [28 U.S.C.] § 1581(i) is specified by 28 U.S.C. § 2636(i) ...."). Prysmian has invoked the Court's jurisdiction under 28 U.S.C. § 1581(i). Am. Compl. ¶ 8, ECF No. 16. Because this Court's jurisdiction is under Section 1581(i), 28 U.S.C. § 2636(i) applies. Thus, under Prysmian's own allegations, Prysmian's claims are subject to the two-year limitation period. *See Mitsubishi Elecs.*, 44 F.3d at 977.

Prysmian's argument also fails for a second reason. It has neglected to note that its preferred statute of limitations "applies generally to suits against the United States *unless the timing provision of a more specific statute displaces it*." *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2450 (2024) (emphasis added). As noted above, Section 2636(i) prohibits any claim under Section 1581(i) "unless commenced ... within two years after the cause of action first accrues." Applying *Corner Post*'s analysis, Section 2636(i) is a specific provision applicable to actions under this Court's Section 1581(i) jurisdiction. It therefore supersedes the six-year general statute of limitations found in 28 U.S.C. § 2401(a). *See Corner Post*, 144 S. Ct. at 2450.

Prysmian's argument for applying a different statute of limitations misunderstands the Court's jurisdictional statutes and ignores Supreme Court precedent. Therefore, Commerce's Motion to dismiss fifteen of Prysmian's seventeen claims for being filed outside the statute of limitations is **GRANTED**.

CONCLUSION

Despite granting Prysmian all favorable inferences, its arguments fall short. First, Commerce did not fail to act. It denied Prysmian's applications. Next, the continuing violation doctrine is not applicable. Finally, Prysmian's argument for ignoring the two-year statute of limitations fails. The Government's Amended Motion to Partially Dismiss is **GRANTED**. Counts I–XIV in Prysmian's Amended Complaint are **DISMISSED**; and the portions of Count XV not relating to the exclusion request denial on July 31, 2022, are also **DISMISSED**. The Court may hear the portions of Count XV relating to the exclusion request denial on July 31, 2022, as well as Count XVI of Prysmian's Amended Complaint.

Dated: January 22, 2025
New York, New York

/s/ Stephen Alexander Vaden
STEPHEN ALEXANDER VADEN, JUDGE

Index

Customs Bulletin and Decisions
Vol. 59, No. 6, February 5, 2025

U.S. Customs and Border Protection
CBP Decisions

General Notices

U.S. Court of International Trade
Slip Opinions

GPO U.S. G.P.O.: 2025—431-372/30113