



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 102, 132, 134, 163, 182, and 190

[USCBP-2021-0026]

[CBP Dec. 21-10]

RIN 1515-AE56

**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**

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 include 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). The USMCA applies to goods from Canada and Mexico entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. This document amends the Code of Federal Regulations (CFR) to implement the provisions in Chapters 1, 2, 5, and 7 of the USMCA related to general definitions, confidentiality, import requirements, export requirements, post-importation duty refund claims, 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. This document makes amendments to apply the marking rules in determining the country of origin for marking

purposes for goods imported from Canada or Mexico and for other purposes specified by the USMCA. This document also includes amendments to add the sugar-containing products subject to a tariff-rate quota under Appendix 2 to Annex 2-B of Chapter 2 of the USMCA to the CBP regulations governing the requirement for an export certificate, and conforming amendments for the declaration required for goods re-entered after repair or alteration in Canada or Mexico, recordkeeping provisions, and the modernized drawback provisions. Concurrently with this interim final rule, CBP is publishing a notice of proposed rulemaking that proposes to apply the rules for all non-preferential origin determinations made by CBP for goods imported from Canada or Mexico. CBP will also issue additional USMCA implementing regulations in an interim final rule to be published in the *Federal Register* at a later date.

DATES: *Effective date:* This interim final rule is effective on July 1, 2021.

Comments due date: Comments must be received by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by *docket number* USCBP-2021-0026, by *one* of the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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>. Due to the relevant COVID-19-related restrictions, CBP has temporarily suspended on-site public inspection of the public comments.

FOR FURTHER INFORMATION CONTACT: *Operational Aspects and Audit Aspects:* Queena Fan, Director, USMCA Center, Office of Trade, U.S. Customs and Border Protection, (202) 738-8946 or usmca@cbp.dhs.gov.

Legal Aspects: Craig T. Clark, Director, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, (202) 325-0276 or craig.t.clark@cbp.dhs.gov.

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

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.

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 adopted the USMCA through the enactment of the United States – Mexico – Canada Agreement Implementation Act (USMCA 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 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 the domestic implementation of the USMCA through the enactment of implementing legislation, 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 Act. All of the changes contained within Title VI of the Appropriations Act are retroactively effective on July 1, 2020, which is the entry into force date of the USMCA. These changes include amending section 202 of the USMCA 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.

Pursuant to Article 5.16 of the USMCA, 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) (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 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) will be amended through rulemaking to reflect future changes to the Uniform Regulations, as needed.

The USMCA superseded NAFTA and its related provisions on the USMCA's entry into force date. *See* Protocol, paragraph 1. Section 601 of the USMCA Act repealed the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Pub. L. 103-182, 107 Stat. 2057 (19 U.S.C. 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

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>.

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 tariff 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,” 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 (Appendix A to part 182). 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, including the U.S. USMCA Implementing Instructions. The United States International Trade Commission has modified the HTSUS to include the addition of a new 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 General 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 the Uniform Regulations regarding

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

rules of origin as well as the Uniform Regulations regarding origin procedures, pursuant to Article 5.16 of the USMCA.

This IFR amends the CBP regulations to implement significant portions of the USMCA, but does not contain all relevant subparts. CBP will promulgate the remaining USMCA implementing regulations and solicit public comments at a later date. Additionally, future trilateral negotiations on the Uniform Regulations may result in additional provisions that must be included in the rulemaking process at a later date. CBP will address any comments received in a final rule published in the *Federal Register*.

1. Customs Related USMCA Provisions Addressed in this IFR

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 to Annex 2-B (Tariff Commitments) of Chapter 2 of the USMCA. *See* Article 2.4 of the USMCA. Appendix 2 to Annex 2-B of Chapter 2 of the USMCA contains the Tariff Schedule of the United States reflecting the tariff-rate quotas that the United States will apply to certain originating goods from Canada under the USMCA. Specifically, paragraph 15 of Appendix 2 to Annex 2-B contains the tariff-rate quota for sugar-containing products of Canada that necessitates an amendment to the CBP regulations. Chapter 2 of the USMCA also sets forth the definition of “commercial samples of negligible value” (Article 2.1); the duty-free treatment of those commercial samples of negligible value, subject to certain conditions (Article 2.9); the duty-free treatment of goods re-entered after being temporarily exported to another USMCA country for repair or alteration, subject to certain exceptions and conditions (Article 2.8); and the drawback and duty-deferral program provisions (Article 2.5).

Chapter 5 of the USMCA sets forth the origin procedures. Specifically, Chapter 5 of the USMCA contains the rules for making a claim for preferential tariff treatment (Article 5.2); the requirements for a certification of origin (Article 5.2); the set of minimum data elements required for a certification of origin (Annex 5-A); the basis of the certification of origin (Article 5.3); the importer's obligations regarding importations when claiming preferential tariff treatment (Article 5.4); the exporter's and producer's obligations (Article 5.6); the recordkeeping requirements for importers, exporters, and producers (Article 5.8); the general origin verification requirements and procedures (Article 5.9); the determination of origin provisions (Article 5.10); the right to file for refunds and claims for preferential tariff treatment after importation (Article 5.11); and the confidentiality provisions related to the exchange of information between USMCA countries (Article 5.12). Additionally, Article 5.5 of the USMCA sets forth the exceptions to the certification of origin requirement. Pursuant to Article 5.5, a certification of origin is not required, with some exceptions related to evading compliance, for a claim of preferential tariff treatment if the value of the importation does not exceed \$1,000 U.S. dollars or any higher amount as the importing USMCA country may establish, or it is an importation of a good for which the USMCA country into whose territory the good was imported has waived the requirement for a certification of origin. Consistent with this article, the United States has established, with the same exceptions related to evading compliance, a higher importation value amount of \$2,500 U.S. dollars for commercial importations and has waived the certification of origin requirement for the entire category of non-commercial importations.

The penalties provisions for the USMCA are described in Chapters 5 and 7. Article 5.13 provides that each USMCA country shall maintain criminal, civil, or administrative penalties for violations of its laws and regulations related to Chapter 5 (*see also* Articles 5.4.2 and 5.6.3). Chapter 7 of the USMCA generally sets forth provisions related to customs administration and trade facilitation. Specifically, Article 7.18 states that each USMCA country shall adopt or maintain measures that allow for the imposition of a penalty by a USMCA country's customs

administration for breach of its customs laws, regulations, or procedural requirements, including those governing tariff classification, customs valuation, transit procedures, country of origin, or claims for preferential tariff treatment. Chapter 7 of the USMCA also contains the confidentiality provisions related to the protection of information collected from traders. The confidentiality provisions in Article 7.22, in combination with the confidentiality provisions in Article 5.12, ensure the protection of confidential information provided to a USMCA country's customs administration and prevent the unauthorized disclosure of this information to third parties and to other USMCA countries.

The Chapters 1, 2, 5, and 7 provisions discussed above are reflected in this IFR.

2. Customs Related Provisions Addressed in Previously Published IFR

Chapter 4 of the USMCA contains the general rules of origin for preferential tariff treatment provisions, and Chapter 6 includes the rules of origin specific to textiles and apparel goods. CBP has already incorporated these rules of origin into the CBP regulations. On July 1, 2020, CBP published an IFR in the *Federal Register* (85 FR 39690) to, in part, add the Uniform Regulations regarding rules of origin trilaterally agreed upon by the United States, Mexico, and Canada as Appendix A of new part 182 to title 19 of the CFR (19 CFR part 182).

3. Customs Related Provisions to Be Addressed in Subsequent Rulemaking

Any additional CBP regulations needed to implement USMCA provisions will be included in a subsequent rulemaking to be published in the *Federal Register* at a later date.

B. Verifications and Determinations of Origin

Chapter 5 of the USMCA and the Uniform Regulations regarding origin procedures govern the verification and determination of origin requirements and procedures. Pursuant to Article 5.9.1 of Chapter 5 of the USMCA, a USMCA country, through its customs administration, may conduct a verification to determine whether a good qualifies for USMCA preferential tariff treatment by one or more of the following means: a written request or

questionnaire seeking information, including documents, from the importer, exporter, or producer; a verification visit to the premises of the exporter or producer in order to request information, including documents, and to observe the production process and the related facilities; 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. For textile or apparel goods, the verification procedures set out in USMCA Article 6.6 provide an alternative verification means that a USMCA country has the discretion to utilize only when conducting a textile or apparel goods verification. The USMCA Article 6.6 site visit verification requirements and procedures will be addressed in a subsequent rulemaking to be published in the *Federal Register* at a later date.

A USMCA country may choose to initiate a verification, using any of these verification means, with the importer or with the person who completed the certification of origin. *See* USMCA Article 5.9.2. If the USMCA country initiates a verification other than with the importer, it must inform the importer, only for the purpose of the importer's knowledge, of the initiation of the verification. *See* USMCA Article 5.9.6 and the Uniform Regulations regarding origin procedures.

USMCA Article 5.9 and the Uniform Regulations regarding origin procedures set forth the information that must be contained in a written request for information, questionnaire, or request for a verification visit (*see* USMCA Article 5.9.5), the requirements that a USMCA country must follow during a verification (*see* USMCA Article 5.9.7(a) and (b)), the time that the importer, exporter, or producer has to respond to a request for information or questionnaire (*see* USMCA Article 5.9.7(c)), and the time that the exporter or producer has to consent to or refuse a verification visit request (*see* USMCA Article 5.9.7(d)).

Pursuant to USMCA Article 5.9.9, when a USMCA country initiates a verification through a verification visit request, the USMCA country is required to provide a copy of the verification visit request to the customs administration of the USMCA country in whose territory

the visit is to occur, and, if requested by the USMCA country in whose territory the visit is to occur, the embassy of that USMCA country in the territory of the USMCA country proposing to conduct the visit. USMCA Article 5.9 contains additional provisions governing verification visit procedures, including providing the circumstances under which the exporter or producer whose premises are to be visited during the verification visit, or the customs administration of the USMCA country in whose territory the verification visit is to occur, may postpone the verification visit. *See* USMCA Article 5.9.10 and 5.9.11.

During a verification, there are also requirements that records be made available for inspection. USMCA Article 5.8 requires that importers, exporters, and producers maintain certain documentation and records. Pursuant to the Uniform Regulations regarding origin procedures, these records must be maintained in such a manner as to enable an officer of the USMCA country's customs administration, when conducting a verification under USMCA Article 5.9, to perform detailed verifications of the documentation and records to verify the information on the basis of which the certification of origin was completed and the claim for preferential tariff treatment was made. Importers, exporters, and producers that are required to maintain records pursuant to USMCA Article 5.8.1 and 5.8.2 must make those records available for inspection by an officer of the USMCA country's customs administration conducting a verification, and in the case of a verification visit, provide facilities for that inspection.

The Uniform Regulations regarding origin procedures also clarify that, where a USMCA country's customs administration is conducting a verification of a good under USMCA Article 5.9, the customs administration may conduct an origin verification of a material that is used in the production of that good. The verification of that material is expected to be conducted in accordance with certain USMCA procedures. The Uniform Regulations regarding origin procedures enumerate the specific USMCA articles and Uniform Regulations regarding origin

procedures paragraphs that apply to the verification of materials.⁴ The USMCA country's customs administration may, during a verification of a material that is used in the production of a good, consider the material to be non-originating in determining whether the good is an originating good, if the producer or supplier of that material does not allow the customs administration access to information required to make a determination of whether the material is originating by denying access to its records; failing to respond to a verification questionnaire or letter; or refusing to consent to a verification visit within the required time.

After the verification is conducted, the USMCA country must provide the importer, and the exporter or producer that completed the certification of origin and is the subject of the verification, with a written determination of origin that includes the findings of facts and the legal basis for the determination. *See* USMCA Article 5.9.14. Prior to issuing this determination of origin, if the USMCA country intends to deny USMCA preferential tariff treatment, the USMCA country must inform the importer, and any exporter or producer who is the subject of the verification and provided information during the verification, of the preliminary results of the verification and a notice of intent to deny that includes when the denial would be effective and a period of at least 30 days for the submission of additional information, including documents, related to the originating status of the good. *See* USMCA Article 5.9.16. The reasons that a USMCA country may deny USMCA preferential tariff treatment are set forth in USMCA Article 5.10.2. Additionally, in accordance with USMCA Article 5.9.17, if a verification indicates a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that a good imported into the country's territory qualifies as an originating good, the USMCA country may withhold preferential tariff treatment to identical goods imported, exported, or

⁴ *See* Uniform Regulations regarding origin procedures, Origin Verifications Section, paragraph 10, which states that where the customs administration of a USMCA country, in conducting an origin verification of a good imported into its territory under USMCA Article 5.9, conducts an origin verification of a material that is used in the production of the good, the origin verification of that material is expected to be conducted in accordance with the procedures set out in: USMCA Article 5.9(1), (5), (7 through 11), (13), and (18); and paragraphs 3, 6, 13, 14, and 15 of the Origin Verifications Section of the Uniform Regulations regarding origin procedures.

produced by such person until that person establishes compliance with USMCA Chapters 4, 5, and 6.

Section 207(a)(1)(A) of the USMCA Act (19 U.S.C. 4533(a)(1)(A)) provides the Secretary of the Treasury with the authority to conduct a verification, pursuant to USMCA Article 5.9, of whether a good is an originating good under section 202 of the USMCA Act (19 U.S.C. 4531) or section 202A of the USMCA Act (19 U.S.C. 4532). Section 207(b) of the USMCA Act (19 U.S.C. 4533(b)(1)) sets forth the basis for a negative determination of origin that applies to verifications conducted under USMCA Chapter 5. Specifically, section 207(b) of the USMCA Act provides that a negative determination is a determination by the Secretary that a claim by the importer, exporter, or producer that the good qualifies as an originating good under 19 U.S.C. 4531 is inaccurate; that the good does not qualify for preferential tariff treatment under the USMCA because the importer, exporter, or producer failed to respond to a request for information or failed to provide sufficient information to determine that the good qualifies as an originating good; after receipt of a notification of a verification visit, the exporter or producer did not provide written consent for the visit; the importer, exporter, or producer does not maintain, or denies access to, records or documentation required under section 508(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1508(1)); or the importer, exporter, or producer otherwise fails to comply with the requirements of section 207 of the USMCA Act or, based on the preponderance of the evidence, circumvents the requirements of section 207 of the USMCA Act. Section 207(c)(1) of the USMCA Act (19 U.S.C. 4533(c)(1)) provides that, upon making a negative determination, the Secretary may deny preferential tariff treatment under the USMCA with respect to the good while section 207(c)(2) of the USMCA Act (19 U.S.C. 4533(c)(2)) allows the Secretary to withhold preferential tariff treatment for identical goods based on a pattern of conduct.

To address these general USMCA verification and determination of origin requirements and procedures, CBP has included subpart G, *Origin Verifications and Determinations*, in part 182 of title 19 of the CFR.

C. Marking Rules

Section 304(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The regulations issued under the authority of section 304 to implement the country of origin marking requirements are set forth in 19 CFR part 134. Part 134 identifies the articles subject to marking, the methods and manner of marking that should be used, the exceptions to the marking requirements, the marking requirements for containers or holders, and the procedures for articles found not legally marked.

CBP employs two primary methods for determining the country of origin for marking purposes when imported goods are processed in, or contain materials from, more than one country. One method uses case-by-case adjudication to determine whether the goods have been substantially transformed in a particular country. The other method consists of codified rules, also used to determine whether the goods have been substantially transformed, primarily expressed through a change in the HTSUS classification, often referred to as a “tariff shift.”

Part 134 sets forth the country of origin marking requirements and exceptions. Section 134.1(b) defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of part 134; however, for a good of a NAFTA country, the marking rules set forth in part 102 of title 19 of the CFR (19 CFR part 102) apply (although these rules have commonly been referred to as the NAFTA Marking Rules, they apply

in other contexts as well and are thus referred to herein as the “part 102 rules”). The part 102 rules are codified rules that determine the country of origin for marking purposes using primarily the “tariff shift” method. CBP first promulgated these codified part 102 rules to fulfill the United States’ commitment under Annex 311 of NAFTA, which required the parties to establish rules for determining whether a good is a good of a NAFTA country. Although the NAFTA Implementation Act was repealed by the USMCA Act as of July 1, 2020, the part 102 rules remain in effect. The part 102 rules are also used for several other trade agreements. For instance, as indicated in the scope provision for part 102 (§ 102.0), the rules set forth in §§ 102.1 through 102.21 also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.769 of the United States-Morocco Free Trade Agreement regulations and § 10.809 of the United States-Bahrain Free Trade Agreement regulations.

The USMCA does not contain a general marking requirement. Except for certain agricultural goods, a good does not need to first qualify to be marked as a good of Mexico or Canada in order to receive preferential tariff treatment under the USMCA. For most goods, only the general Uniform Regulations regarding rules of origin set forth in Appendix A of part 182 of title 19 of the CFR and the product-specific rules of origin contained in General Note 11, HTSUS, are needed to determine whether a good is an originating good under the USMCA to receive preferential tariff treatment. Therefore, in line with the present scope of the part 102 rules, the part 102 rules will continue to be applicable to determine country of origin for marking purposes for goods imported from Canada or Mexico under the USMCA (regardless of whether preferential tariff treatment is claimed).

The Secretary of the Treasury has general rulemaking authority, pursuant to 19 U.S.C. 1304 and 1624, to make such regulations as may be necessary to carry out the provisions of section 304(a) of the Tariff Act of 1930, as amended, related to the country of origin marking requirements for imported articles of foreign origin. CBP believes that extending application of

the well-established part 102 rules to USMCA goods will provide continuity for the Canadian and Mexican importing community because those rules have been applied to all imports from Canada and Mexico since 1994. As a result of this longevity, the importing community has made extensive efforts to comply with the part 102 rules and CBP has significant experience in applying those rules to goods from Canada and Mexico. These factors provide predictability and consistency in the application of the marking rules and in CBP's administration of the rules. The codified part 102 rules are a simplified and standardized approach for determining the country of origin for marking purposes (regardless of whether preferential tariff treatment is claimed).

The importing communities from Canada and Mexico are used to applying the part 102 rules as opposed to the case-by-case method. Accordingly, to make the transition from NAFTA to the USMCA as least disruptive to the importing community as possible, CBP has decided to continue application of the current part 102 rules to determine the country of origin for marking purposes of a good imported from Canada or Mexico to articles imported pursuant to the USMCA. However, the other marking requirements in 19 CFR part 134, such as the rules for marking containers, the exceptions applicable to the marking requirements, and the methods of marking, also previously applied to goods from Canada and Mexico, and continue to apply to these goods. Thus, CBP is amending parts 102 and 134 of title 19 of the CFR to continue the application of the part 102 rules for determining origin for marking purposes for Mexico and Canada, and also to reflect the continued applicability of the other marking requirements and the relevant exceptions.

Origin determinations are also required in other instances, such as in the administration of quantitative restrictions. Concurrently with this IFR, CBP is publishing a notice of proposed rulemaking (NPRM) that proposes to apply the part 102 rules for non-preferential origin determinations made by CBP for goods imported from Canada or Mexico, including government

procurement determinations.⁵ In addition to promoting uniformity and transparency, the NPRM will implement USMCA Article 13.4.5, which provides as follows: “For the purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.”⁶

Adverse Marking Decisions

Under NAFTA, an adverse marking decision is a decision by CBP which an exporter or producer of merchandise believes to be contrary to the provisions of Annex 311 of NAFTA. While Article 510 of NAFTA provides specific rights of review and appeal for marking determinations, the USMCA does not provide any such rights. Additionally, section 209 of the USMCA 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 with respect to adverse marking decisions, for NAFTA exporters and producers. Thus, these specific rights and procedures are not provided for under the USMCA or the USMCA Act. Accordingly, an importer, or an exporter or producer (only when acting as the importer of record (IOR)) wishing to request review and/or appeal of CBP marking determinations must follow the procedures set forth in part 174 of the CFR.

Part 174 sets forth the general protest procedures pursuant to 19 U.S.C. 1514, which allows for the administrative review of challenges to CBP determinations, including marking and other origin decisions. As the general statutory and regulatory authority for protests in 19 U.S.C.

⁵ That proposed rule does not apply for purposes of determining whether merchandise is subject to the scope of antidumping and countervailing duty proceedings under Title VII of the Tariff Act of 1930, as amended, as such determinations fall under the authority of the Department of Commerce. Specifically, notwithstanding a CBP country of origin determination, that merchandise may be subject to the scope of antidumping and/or countervailing duty proceedings associated with a different country.

⁶ Although Canada is not a party to Chapter 13 of the USMCA, the United States has a similar commitment to Canada through Article IV-5 of the World Trade Organization (WTO) Revised Agreement on Government Trade, as amended on Mar. 30, 2012, Marrakesh Agreement Establishing the World Trade Organization, Annex 4(b), 1915 U.N.T.S. 103.

1514 and 19 CFR part 174 and the specific USMCA authority under the USMCA and the USMCA Act do not provide exporters or producers the right to request administrative review and appeal of marking decisions, USMCA exporters and producers may not file a protest of a marking determination under the USMCA, unless the exporter or producer is acting as the IOR.

D. Tariff-rate Quota for Sugar-Containing Products Originating in Canada

Tariff-rate quotas permit a specified quantity (“in-quota quantity”) of merchandise to be entered or withdrawn for consumption at a reduced duty rate (“in-quota tariff rate of duty”) during a specified period. *See* 19 CFR 132.1(b). Appendix 2 to Annex 2-B of Chapter 2 of the USMCA, entitled Tariff Schedule of the United States - (Tariff Rate Quotas), reflects the tariff-rate quotas that the United States will apply to certain originating goods from Canada under the USMCA. These originating goods from Canada are permitted entry into the territory of the United States, at the in-quota quantity, subject to the reduced quota rates instead of the rates of duty specified in Chapter 1 through Chapter 97 of the HTSUS.

Paragraph 15 of Appendix 2 to Annex 2-B of the USMCA sets out the tariff-rate quota for sugar-containing products of Canada, including the aggregate quantity of originating goods of Canada permitted to enter free of duty in each calendar year and the article description of the qualifying originating goods. Pursuant to section 103(c)(4) of the USMCA Act, which authorizes the President to take necessary actions to implement the tariff-rate quotas in the Schedule of the United States to Annex 2-B of the USMCA, the special classification provisions in Chapter 98 of the HTSUS have been modified to include the sugar-containing products subject to this tariff-rate quota.

The tariff-rate quota for sugar-containing products of Canada under the USMCA will be administered using export certificates. When Canada provides the United States with the written notification of its intent to require export certificates for sugar-containing products in accordance with paragraph 15(d) of Appendix 2 of Annex 2-B of the USMCA, the USTR will publish a notice in the *Federal Register* announcing this determination. In any year for which the USTR

has published such a determination in the *Federal Register*, imports of the sugar-containing products of Canada, at the in-quota quantity, will only be eligible for the in-quota tariff rate of duty if the U.S. importer makes a declaration to CBP, in the form and manner determined by CBP, that a valid export certificate issued by the Government of Canada is in effect for the goods.

Section 132.17 of title 19 of the CFR (19 CFR 132.17) sets forth the form and manner determined by CBP to constitute a required declaration that a valid export certificate is in effect for the goods. Specifically, § 132.17 governs the requirement for an export certificate for sugar-containing products to qualify for the tariff-rate quota and provides a description of the sugar-containing products subject to these requirements, when the export certificate is valid, and the recordkeeping retention and production requirements. For the sugar-containing products described in § 132.17(a), the importer must possess a valid export certificate in order to claim the in-quota tariff rate of duty on the products at the time they are entered or withdrawn from warehouse for consumption. The importer must record the unique identifier of the export certificate for these products on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent. The Government of Canada will issue the export certificates. A certificate is valid if it meets the requirements of 15 CFR 2015.3(b). If the export certificate is valid, it will authorize entry into the United States at the in-quota tariff rate of duty established under the USMCA.

III. Amendments to the Regulations

Pursuant to 19 U.S.C. 4535(a), the Secretary of the Treasury has the authority to prescribe such regulations as may be necessary to implement the USMCA. Section 103(b)(1) of the USMCA Act (19 U.S.C. 4513(b)(1)) requires that initial regulations necessary or appropriate to carry out the actions required by or authorized under the USMCA Act or proposed in the Statement of Administrative Action approved under 19 U.S.C. 4511(a)(2) to implement the

USMCA shall, to the maximum extent feasible, be prescribed within one year after the date on which the USMCA enters into force. This IFR amends the CBP regulations to implement significant portions of the USMCA. CBP will promulgate the remaining USMCA implementing regulations.

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 significant portions of USMCA Chapters 1, 2, 5, and 7, as discussed above, in the existing part 182 regulatory framework. Additionally, this document makes necessary amendments to other parts of title 19 of the CFR to implement relevant USMCA provisions and to apply the part 102 rules when determining the country of origin for marking purposes for goods imported from USMCA countries.

All of the regulatory amendments made in this document are consistent with the provisions of the USMCA, the Uniform Regulations regarding origin procedures, and the USMCA Act (19 U.S.C. Chapter 29).

A. Part 10

Section 10.8 sets forth the documentation requirements for articles exported for repairs or alterations. As explained further in Section III.F., *Subpart J—Commercial Samples and Goods Returned after Repair or Alteration* below, CBP is applying the documentation provisions of § 10.8(a), (b), and (c) to the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty-free. Section 10.8(a)(2) provides that a declaration must be completed by the owner, importer, consignee, or agent having knowledge of the pertinent facts and filed during entry of the articles that are returned after having been exported for repairs or alterations. Currently, this declaration requires

the individual completing it to state that such articles were exported from the United States for repairs or alterations and without benefit of drawback. This portion of the declaration is necessary because ordinarily these re-entered goods do not qualify for a reduced duty rate with the benefit of drawback. However, there is an exception provided in U.S. Note 1 of Subchapter II, Chapter 98, HTSUS, for NAFTA and USMCA drawback. Goods re-entered after repair or alteration are eligible for duty-free treatment even if subject to NAFTA or USMCA drawback. Accordingly, CBP is amending the declaration in § 10.8(a)(2) to clarify this distinction by adding “(unless subject to USMCA drawback)” after “without the benefit of drawback.”

B. Part 102

Part 102, *Rules of Origin*, sets forth rules for determining the country of origin of certain imported goods. CBP is amending part 102 of title 19 of the CFR (19 CFR part 102) to apply its rules of origin to determine the country of origin for marking purposes of goods imported from Canada or Mexico under the USMCA (regardless of whether preferential tariff treatment is claimed).

1. Scope

This document amends § 102.0 to extend the scope of part 102 to include the USMCA. Section 102.0 is revised to state that the rules set forth in §§ 102.1 through 102.18 and 102.20 also determine the country of origin for marking purposes for goods imported from a USMCA country. Under the USMCA, the Uniform Regulations regarding rules of origin set forth in Appendix A to part 182 and the product-specific rules of origin contained in General Note 11, HTSUS, are needed to determine whether a good originates under the USMCA to receive preferential tariff treatment. The USMCA includes, *inter alia*, provisions that rely on whether goods qualify to be marked as goods of Canada, Mexico, or, under General Note 11, HTSUS, the United States, to determine the appropriate tariff benefit, thus also requiring the part 102 rules. *See* USMCA Chapter 2, Annex 2-B, Tariff Schedule of the United States, General Notes.

2. Definitions

Section 102.1 sets forth the general definitions applicable to this part. CBP is adding a new definition for “inventory management method” to provide clarity to the public. Currently, part 102 refers to the inventory management method merely with cross-references to part 181 without defining the term or providing a specific citation for where the method is described. As the term “inventory management method” is used for purposes of NAFTA and the USMCA, CBP believes that adding the definition in § 102.1 is necessary. Thus, the term “inventory management method” is added as paragraph (l) and is defined as “(1) averaging; (2) “last-in, first-out;” (3) “first-in, first-out;” or (4) any other method that is recognized in the Generally Accepted Accounting Principles (GAAP) of the country in which the production is performed or otherwise accepted by that country.” In order to add the term in alphabetical order, CBP is redesignating paragraphs (l) through (p) as paragraphs (m) through (q).

CBP is also revising the definition of “value.” The definition of “value” provides different methods for calculating the value of goods or materials for purposes of determining whether foreign material that does not undergo the applicable change in tariff classification (set out in § 102.20) or satisfies the other applicable requirements of that section is considered de minimis (set out in § 102.13). CBP is adding the clarifier “under NAFTA” to paragraphs (1) and (2) to make clear that the methods set forth in these paragraphs only apply to NAFTA. CBP is adding a new paragraph (3) to set forth the method used for calculating the value of goods or materials under the USMCA for purposes of determining whether foreign material is considered de minimis. Under the USMCA, the value of a good or material is its customs value or transaction value within the meaning of the Uniform Regulations regarding rules of origin set forth in Appendix A to part 182.

3. Inapplicability of NAFTA Preference Override to USMCA Claims

CBP is amending § 102.19 to limit the NAFTA preference override to apply to NAFTA only. Under NAFTA, to receive preferential tariff treatment, a good must be “originating” under

General Note 12, HTSUS, and the good must qualify to be marked as a good of a NAFTA country under the part 102 rules in § 102.20. Under the USMCA, unlike NAFTA, a good does not need to qualify to be marked as a good of Canada or Mexico in order to receive preferential tariff treatment. Accordingly, the NAFTA preference override provisions are no longer necessary under the USMCA. Thus, CBP is adding a new paragraph (c) to § 102.19 to state that the NAFTA preference override in paragraphs (a) and (b) applies only to goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020, which is the date that the USMCA entered into force.

4. Conforming Amendments

As a result of adding the definition of “inventory management method” to § 102.1, CBP needs to make several conforming amendments to other sections of part 102. Accordingly, CBP is removing the phrase “provided under the appendix to part 181 of this chapter” from § 102.11(b)(2) and “provided under the appendix to part 181 of the Customs Regulations” from § 102.12(b). These cross-references to the inventory management methods in the appendix to part 181 are no longer needed because the definition of “inventory management method” is now contained in the general definitions of part 102.

C. Part 132

Part 132, *Quotas*, sets forth the rules and procedures applicable to quotas administered by CBP. CBP is amending § 132.17(a) to reflect the tariff-rate quota for sugar-containing products of Canada established in paragraph 15 of Appendix 2 to Annex 2-B of Chapter 2 of the USMCA. CBP has decided to adopt a similar approach for describing the sugar-containing products as used in the preceding section of this part when describing the beef products subject to an export certificate requirement. This simpler approach removes the specific HTSUS subheading classifications and, alternatively, cross-references to the USTR definition of sugar-containing products and the description of the products in paragraph 15 of Appendix 2 to Annex 2-B of

Chapter 2 of the USMCA. As CBP is not the party responsible for determining the sugar-containing products that qualify for the tariff-rate quota, this approach ensures that the CBP regulations contain an accurate description of the products in the event of a change in the HTSUS subheadings or a change in the USTR definition.

D. Part 134

Part 134, *Country of Origin Marking*, sets forth the regulations implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). For purposes of the USMCA, the part 102 rules will be applied to determine the country of origin for marking purposes of a good imported from Canada or Mexico (regardless of whether preferential tariff treatment is claimed). Thus, CBP is making the necessary amendments to part 134. Part 134 identifies the articles subject to marking, the methods and manner of marking that should be used, the exceptions to the marking requirements, the marking requirements for containers or holders, and the procedures for articles found not legally marked.

1. Definitions

Section 134.1 contains the definitions for part 134. CBP is adding the USMCA to several definitions to clarify that, for those purposes, a good may be from either a NAFTA or USMCA country. In the “country of origin” definition in § 134.1(b), CBP is adding language to clarify that for a good of a NAFTA or USMCA country, the rules set forth in part 102 determine the country of origin for marking purposes. The definition of the “NAFTA Marking Rules” in paragraph (j) has been replaced with a new definition for the “Part 102 Rules,” which are rules promulgated for purposes of determining whether a good is a good of a NAFTA country and to determine the country of origin for marking purposes for goods imported from USMCA countries.

For the definition of “ultimate purchaser” in § 134.1(d), CBP is adding “or USMCA” to note that, instead of the general definition of “ultimate purchaser,” the USMCA will use the same definition of “ultimate purchaser” as applied to a good of a NAFTA country. For a good of a NAFTA or USMCA country, the “ultimate purchaser” is the last person in the United States who purchases the good in the form in which it was imported. The words “or USMCA” have also been added to the examples and the term “part 102 Rules” has replaced the term “NAFTA Marking Rules,” in the examples of an “ultimate purchaser,” as appropriate.

CBP is further amending § 134.1(g) to add the USMCA to the definition of a “good of a NAFTA country” and to replace references to the “NAFTA Marking Rules” with “part 102 Rules.” The paragraph heading of paragraph (g) has been revised to read “good of a NAFTA or USMCA country” and “or USMCA” has been added to the definition to define a “good of a NAFTA or USMCA country” for marking purposes, as an article for which the country of origin is Canada, Mexico, or the United States as determined under the part 102 Rules. Paragraph (i) defining a “NAFTA country” has similarly been revised. The paragraph heading of paragraph (i) has been revised to read “NAFTA or USMCA country” and the appropriate cross-reference to the definition of “territory” in the USMCA has been added. Accordingly, a “NAFTA or USMCA country” is defined as the territory of the United States, Canada, or Mexico, as defined in Annex 201.1 of the NAFTA and Chapter 1, Section C of the USMCA.

Finally, § 134.1 has added a new paragraph (l) to include a definition of “USMCA” and has revised the definition of “NAFTA” in paragraph (h). The new paragraph (l) defines “USMCA” as the Agreement between the United States of America, the United Mexican States, and Canada (USMCA), entered into force by the United States, Canada and Mexico on July 1, 2020. CBP has also added a second sentence to the definition of “NAFTA” stating that NAFTA is not applicable to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020 to clarify in part 134 that the USMCA superseded NAFTA when it entered into force.

2. Marking of Containers

Subpart C of part 134 addresses the marking requirements and exceptions under 19 U.S.C. 1304(b) for containers and holders. CBP is amending §§ 134.22, 134.23 and 134.24, which provide the general rules for marking of containers or holders, the rules for containers or holders designed for or capable of reuse, and the rules for containers or holders not designed for or capable of reuse, to add the necessary USMCA references. Specifically, CBP is adding “or USMCA” to §§ 134.22(b), (d)(2), and (e)(1) to indicate that a good of a USMCA country which is a usual container is treated the same as a good of a NAFTA country. No marking is required for any good of a NAFTA or USMCA country that is a usual container.

CBP is amending § 134.23(a) to note that the exception for goods of a NAFTA country which are usual containers also applies to the USMCA with the addition of the words “or USMCA.” CBP is also revising §§ 134.24(c)(1), (c)(2), and (d)(1) by adding “or USMCA” to clarify that disposable containers or holders are treated the same under the USMCA as under NAFTA.

3. Exceptions to the Marking Requirements

In section 209 of the USMCA Act, Congress amended section 304(k) of the Tariff Act of 1930, as amended (19 U.S.C 1304(k)), to create the same exceptions to the marking requirements for the goods of a USMCA country as under NAFTA. Section 134.32 contains the general exceptions to the marking requirements. CBP is adding “or USMCA” to paragraphs (h), (p) and (q) of § 134.32 to indicate that the exceptions to the marking requirements apply to NAFTA and the USMCA. These general exceptions to the marking requirements are: to articles of a USMCA country for which the ultimate purchaser must reasonably know the country of origin by reason of the circumstances of their importation or by reason of the character of the articles even though they are not marked to indicate their origin; to goods of a USMCA country which are original works of art; and to goods of a USMCA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the HTSUS.

4. Other Marking Provisions

CBP is also adding “or USMCA” to multiple other provisions in part 134 to indicate that goods of a USMCA country are subject to the same treatment and marking requirements as goods of a NAFTA country. Specifically, CBP is revising §§ 134.35(a) and (b), 134.43(a), (c)(3), (d)(3), and 134.45(a)(2) to include the USMCA. These sections address articles substantially changed by manufacture, methods of marking specific articles, and approved markings of country name, respectively. Additionally, CBP is revising § 134.35(b) to replace a reference to the “NAFTA Marking Rules” with “part 102 Rules.”

E. Part 163

Part 163, *Recordkeeping*, sets forth the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records. As discussed in more detail in Section III.F., *Subpart C—Export Requirements* below, 19 CFR 182.21(c) requires an exporter or producer who completes a certification of origin or a producer who provides a written representation for a good exported from the United States to Canada or Mexico to maintain all records and supporting documents relating to the origin of a good for which the certification of origin was completed. The records must be maintained as provided for in § 163.5. Because § 163.5(a) qualifies that the requirement to maintain records for the required retention periods and in the prescribed format only pertains to persons listed in § 163.2, CBP is amending § 163.2 to add USMCA exporters and producers.

CBP is amending the scope provision in § 163.0, redesignating § 163.2(c)(2) to (c)(3), and adding a new § 163.2(c)(2) to include the USMCA exporters or producers. It is not necessary to amend § 163.2 to include the USMCA importers because § 163.2 includes all importers without qualification. CBP will make any additional amendments to part 163 necessary to implement the USMCA and to incorporate modifications to the Uniform Regulations in a subsequent rulemaking to be published in the *Federal Register* at a later date.

F. Part 182

Part 182, *United States-Mexico-Canada Agreement*, implements the duty preference and related customs provisions applicable to imported goods under the USMCA. CBP is amending part 182 of title 19 of the CFR (19 CFR part 182) to promulgate additional USMCA implementing regulations related to Chapters 1, 2, 5, and 7 of the USMCA. Currently, part 182 contains a framework with its various subparts outlined. The existing part 182 substantive provisions include the scope, a rules of origin subpart (Subpart F), and Appendix A that sets forth the Uniform Regulations regarding rules of origin trilaterally agreed upon by the United States, Mexico, and Canada.

This document amends part 182 to add the general definitions and confidentiality provisions to Subpart A (General Provisions), and to add the implementing regulations for Subparts B (Import Requirements), C (Export Requirements), D (Post-Importation Duty Refund Claims), E (Restrictions on Drawback and Duty-Deferral Programs), G (Origin Verifications and Determinations), J (Commercial Samples and Goods Returned after Repair or Alteration), and K (Penalties). The implementing regulations for the remaining part 182 subparts will be included in a subsequent rulemaking to be published in the *Federal Register* at a later date.

Subpart A—General Provisions

Definitions

Section 182.1 sets forth the general definitions applicable to this part. 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. Additional definitions that are not common terms throughout part 182 and are applicable on a more limited basis are set forth elsewhere with the substantive provisions to which they relate. For instance, Appendix A to part 182 contains many definitions that are applicable only to the Uniform Regulations regarding rules of origin.

Confidentiality

To ensure protection of confidential information provided to a USMCA country's customs administration and to prevent the unauthorized disclosure of this information to third parties and to other USMCA countries, the USMCA contains confidentiality protections. These confidentiality provisions are set forth in USMCA Articles 5.12, 7.22, 7.26, and 7.28. The USMCA also extends the confidentiality provisions in Articles 5.12 and 7.22 to textile and apparel goods under USMCA Chapter 6. *See* USMCA Article 6.9.

Article 5.12 generally governs the treatment of confidential information exchanged by USMCA countries. A USMCA country that receives information designated as confidential from another USMCA country or that is deemed confidential under the receiving USMCA country's laws is required to maintain the confidentiality of this information pursuant to its respective laws. The receiving USMCA country may use or disclose the confidential information, however, for purposes of administration or enforcement of its customs laws or as otherwise provided for under its law, including in an administrative, quasi-judicial, or judicial proceeding. *See* USMCA Article 5.12.1 and 5.12.3. A USMCA country may decline to provide information requested by another USMCA country if it has failed to act to keep information confidential in accordance with its law. *See* USMCA Article 5.12.2. USMCA Article 7.28 extends these confidentiality protections to Section B in USMCA Chapter 7 on cooperation and enforcement. USMCA Article 7.26 governs the exchange of specific confidential information between USMCA countries and sets forth the procedures for USMCA countries to request and provide information that is normally collected in connection with the importation, exportation, or transit of a good for purposes of enforcing or assisting in the enforcement of measures concerning customs offenses.

USMCA Article 7.22 governs the protection of information, related to members of the trade community (traders), received by the USMCA country's customs administration. It requires that each USMCA country's customs administration apply measures governing the

collection, protection, use, disclosure, retention, correction, and disposal of information that it collects from traders. *See* USMCA Article 7.22.1. Each USMCA country's customs administration must protect confidential information from use or disclosure, in accordance with its laws, that could prejudice the competitive position of the trader to whom the confidential information relates. *See* USMCA Article 7.22.2. The customs administration may use or disclose confidential information, however, for the purposes of administration or enforcement of its customs laws or as otherwise provided under its law, including in an administrative, quasi-judicial, or judicial proceeding. *See* USMCA Article 7.22.3. The confidentiality provisions as set forth in USMCA Articles 5.12, 7.22, 7.26, and 7.28 apply to all applicable exchanges of confidential information between the USMCA countries, including a USMCA Article 7.27 verification report containing information obtained during a verification, such as data and documents, that is provided when a USMCA country requests another USMCA country conduct a verification in its territory. Additionally, to further safeguard confidential information, the USMCA allows the importer, exporter, or producer to send information directly to the USMCA country conducting a verification, including documents, to allow the party to protect its proprietary information. *See* USMCA Article 5.9.3.

Several U.S. statutes and regulations govern CBP's treatment and disclosure of confidential information. The exchange of information between USMCA countries is governed by 19 U.S.C. 1628. Section 209(c) of the USMCA Act amended section 628 of the Tariff Act of 1930 (19 U.S.C. 1628) by striking subsection (c) and inserting language applicable to the USMCA in accordance with USMCA Articles 5.12, 7.26, and 7.28. Pursuant to 19 U.S.C. 1628(c), the Secretary may authorize CBP to exchange information with any government agency of a USMCA country if the Secretary reasonably believes the exchange of information is necessary to implement USMCA chapters 2, 4, 5, 6, or 7, and obtains assurances from such agency that the information will be held in confidence and used only for governmental purposes.

The Privacy Act (5 U.S.C. 552a) governs the collection, maintenance, use, and dissemination of personally identifiable information (PII) in systems of records maintained by Federal agencies. PII is defined as information that permits the identity of an individual to be directly or indirectly inferred, including any other information that is linked or linkable to that individual, regardless of whether the individual is a U.S. citizen, lawful permanent resident, visitor to the United States, or employee or contractor of the Department of Homeland Security.

The Freedom of Information Act (FOIA) (5 U.S.C. 552) provides that any person has the right to request access to records from any federal agency. Under FOIA's terms, federal agencies must disclose records upon receiving a written request for them, except for those records or portions of records protected from disclosure by any of the nine exemptions or three exclusions found in the statute.

Part 5 of title 6 of the CFR (6 CFR part 5) governs the disclosure of information created or maintained by CBP and requested pursuant to the FOIA and Privacy Act. Part 103 of title 19 of the CFR (19 CFR part 103) governs the production and disclosure of CBP-maintained information under other statutory or regulatory provisions and/or as requested through administrative and/or legal processes. Accordingly, part 5 of title 6 and part 103 of title 19 apply where the impetus for the release of information to a member of the public by CBP stems from a request from a member of the public, while USMCA-related disclosures involve CBP proactively releasing information to third parties, for example, the importer, exporter, producer, or other USMCA country, to fulfill the United States' commitments under the USMCA. Nonetheless, CBP will maintain the confidentiality and disclosure protections in part 103 for USMCA-related information disclosures, including § 103.23(b) detailing the circumstances where disclosures will not be made and § 103.33 addressing the release of information to foreign agencies.

The Trade Secrets Act (18 U.S.C. 1905) bars the unauthorized disclosure by government officials of any information received in the course of their employment or official duties when

such information “concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association.” *See* 18 U.S.C. 1905. Specifically, the Trade Secrets Act protects those required to furnish commercial or financial information to the government by shielding them from the competitive disadvantage that could result from disclosure of that information by the government. The courts have interpreted the Trade Secrets Act as covering the same type of information that falls under Exemption 4 of the FOIA. *See, e.g., CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1140 (D.C. Cir. 1987). Exemption 4 of the FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” *See* 5 U.S.C. 552(b)(4).

The Trade Secrets Act permits those covered by the Act to disclose protected information when the disclosure is otherwise “authorized by law,” which includes both statutes expressly authorizing disclosure and properly promulgated substantive agency regulations authorizing disclosure based on a valid statutory interpretation. *See Chrysler v. Brown*, 441 U.S. 281, 294–316 (1979). For example, 19 U.S.C. 1514(e) grants the Secretary of the Treasury authority to provide, in the case of a negative USMCA determination, the entry number and any other entry information considered necessary to allow the exporter or producer, who is the subject of the determination and completed the certification of origin, to exercise its protest rights pursuant to 19 CFR part 174, except when there is a pattern of conduct of false or unsupported representations pursuant to 19 U.S.C. 1514(f).

Thus, CBP is adding a new § 182.2 to address CBP’s responsibility to maintain the confidentiality of the USMCA-related information it receives from the public in accordance with existing statutory and regulatory requirements, including 19 CFR part 103, 6 CFR part 5, and all other applicable statutes and regulations, the legally permitted disclosures of this information that CBP is authorized to make to third parties and other USMCA countries, and the information

sharing that is permissible with U.S. government authorities, including the Department of Labor with respect to the USMCA's labor value content requirements.

Section 182.2 fulfills CBP's commitment under USMCA Article 7.22 to apply measures governing the protection, use, and disclosure of information collected from traders. Section 182.2 is focused on USMCA-related disclosures of information collected from members of the trade community (traders). As discussed in more detail in Section III.F., *Subpart G— Origin Verifications and Determinations* below, the USMCA requires several notifications, unique to the USMCA, that permit authorized disclosures to importers, exporters, or producers of information collected from traders. Under the USMCA and the Uniform Regulations regarding origin procedures, the confidentiality requirements apply when CBP provides a determination of origin, originally issued to the exporter or producer, to the importer in accordance with USMCA Article 5.9.14 and the Uniform Regulations regarding origin procedures.

In order to ensure compliance with the applicable U.S. statutory and regulatory provisions, CBP is also extending the confidentiality regulations in § 182.2 to any of the notifications made during a verification that potentially involve information disclosures to third parties. These include CBP's notification of the initiation of a verification to the importer (§ 182.73(c)), sending a request for information to the exporter or producer prior to issuing a negative determination (§ 182.75(c)(1)), the issuance of a positive or negative determination of origin (§ 182.75), and the issuance of the intent to deny (§ 182.75(c)(3)). Section 182.2(b) also authorizes CBP to disclose confidential information collected from traders to U.S. government authorities responsible for the administration and enforcement of USMCA requirements, such as the information in the labor value content vehicle certifications to the Department of Labor. The provision that allows the importer, exporter, or producer to send information directly to CBP to protect its proprietary information is set forth in § 182.72(c). *See* subpart G of part 182.

While § 182.2 is intended to address only USMCA-specific information collections and disclosures, CBP will continue to treat all confidential information received from the public,

such as routine entry information, in accordance with existing statutory and regulatory requirements, including the routine uses of the systems of record notices (SORNs) for the trade systems maintained by CBP. As discussed above, the exchange of information between USMCA countries is governed by statutory authority (19 U.S.C. 1628).

Subpart B—Import Requirements

Subpart B of part 182 (19 CFR 182.11 – 182.16) contains the USMCA import requirement provisions, as provided for in Chapter 5 of the USMCA, including the filing of a claim for preferential tariff treatment upon importation (§ 182.11), certification of origin requirements (§ 182.12), importer obligations (§ 182.13), certification of origin not required (§ 182.14), maintenance of records (§ 182.15), effect of noncompliance, and failure to provide documentation regarding transshipment (§ 182.16).

Section 182.11, *Filing of claim for preferential tariff treatment upon importation*, sets forth the procedure for making a claim for preferential tariff treatment upon importation, the basis for making a claim, and the requirement that the importer correct a claim if it has reason to believe that the claim is based on inaccurate information or is otherwise invalid. In accordance with Article 5.2.1 of the USMCA, an importer may make a claim for USMCA preferential tariff treatment based on a certification of origin completed by the importer, exporter, or producer for the purpose of certifying that a good being exported from the territory of a USMCA country into the territory of another USMCA country qualifies as an originating good. An importer who makes a claim for preferential tariff treatment upon importation, pursuant to § 182.11(b), also qualifies for an exemption from the merchandise processing fee.

Section 182.12, *Certification of Origin*, indicates the requirements for the certification of origin, consistent with Articles 5.2 and 5.3 of the USMCA, including the specifics on what the certification of origin must contain, its form, its basis, its applicability, and its validity.

Section 182.14, *Certification of origin not required*, sets forth the types of importations, consistent with Article 5.5 of the USMCA, where an importer will not be required to submit a

copy of a certification of origin. Unless § 182.14(b) applies, an importer will not be required to submit a copy of a certification of origin for a non-commercial importation of a good; or a commercial importation for which the value of the originating goods does not exceed \$2,500 in U.S. dollars.

Section 182.15, *Maintenance of records*, contains the recordkeeping requirements, in accordance with Article 5.8.1 of the USMCA, that apply to an importer claiming USMCA preferential tariff treatment for a good imported into the United States. The importer must maintain the certification of origin and all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the USMCA, including those related to transit and transshipment, for a minimum of five years from the date of importation of the good. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163.

Pursuant to § 182.16(a), if the importer fails to comply with applicable requirements under this subpart, including submission of a complete certification of origin prepared in accordance with §§ 182.12 and 182.14, when requested, CBP may deny preferential tariff treatment to imported goods. In addition, pursuant to § 182.16(b), CBP may deny preferential tariff treatment to an originating good if the good is transported outside the territories of the USMCA countries, and at the request of CBP, the importer of the good does not provide evidence demonstrating to the satisfaction of CBP that the transit and transshipment conditions of the USMCA were met.

Subpart C—Export Requirements

Subpart C of part 182 (19 CFR 182.21) sets forth the obligations of an exporter or producer who completes a certification of origin for a good exported from the United States to Canada or Mexico. These export requirements are in accordance with Article 5.6 of the

USMCA. These requirements include the submission of the certification of origin to CBP upon request, and a requirement to provide prompt notification of errors in the certification of origin that could affect its accuracy or validity to every person to whom the certification was provided, including CBP.

Paragraph (c) of § 182.21 sets forth the recordkeeping requirements, in accordance with Article 5.8.2 of the USMCA, that apply to an exporter or producer who completes a certification of origin or a producer who provides a written representation for a good exported from the United States to Canada or Mexico. These records must be maintained as provided for in 19 CFR 163.5 and must be stored and made available for examination and inspection by the appropriate CBP official in the same manner as provided in part 163. As discussed in Section III.E. Part 163 above, to impose these recordkeeping requirements on the USMCA exporters and producers, CBP had to make conforming amendments to 19 CFR § 163.2(c).

Subpart D—Post-Importation Duty Refund Claims

Subpart D of part 182 (19 CFR 182.31 – 182.33) sets forth the provisions related to post-importation claims for preferential tariff treatment. 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 (1520(d) claims). Notwithstanding the fact that a valid protest was not filed, and provided a claimant files the required documents as described in 19 CFR 182.32(b), this provision allows the claimant to receive refunds for any excess duties. *See* 19 U.S.C. 1520(d).

Section 182.31 sets forth the right to make this post-importation claim for preferential tariff treatment. Specifically, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in §

182.32. CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 182.33 of this subpart.

As described above, on December 27, 2020, the Appropriations Act was enacted with Title VI of the Act setting forth technical corrections to the USMCA Act. Prior to the enactment of the Appropriations Act and the technical corrections, section 205(a)(1)(C) of the USMCA Act only permitted an importer who made a claim for USMCA preferential tariff treatment upon importation pursuant to § 182.11(b) to qualify for an exemption from the merchandise processing fee while importers who filed a USMCA post-importation claim under 19 U.S.C. 1520(d) (1520(d) claim) were limited to the refund of any excess duties paid at importation and were specifically excluded from receiving the refund of any merchandise processing fees paid at importation. 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. This change is retroactively effective as of July 1, 2020, USMCA's entry into force date, and authorizes CBP to issue refunds of the merchandise processing fees for USMCA post-importation claims.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

Subpart E of part 182 (19 CFR 182.41 – 182.54) 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 duties, taxes, and fees imposed and paid under Federal law upon entry or importation.

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 foreign trade zones under part 146, and for temporary importations under bond in part 10.

Subpart E contains sections on applicability (§ 182.41), duties and fees not subject to drawback (§ 182.42), eligible goods subject to USMCA drawback (§ 182.43), calculation of drawback (§ 182.44) – which includes the lesser of duty rule for USMCA drawback at § 182.44(a), goods eligible for full drawback (§ 182.45), filing of drawback claim (§ 182.46), completion of claim for drawback (§ 182.47), retention of records (§ 182.49), liquidation and payment of drawback claims (§ 182.50), prevention of improper payment of claims (§ 182.51), subsequent claims for preferential tariff treatment (§ 182.52), verification of claim for drawback, and waiver or reduction of duties (§ 182.54). Certain sections and paragraphs in subpart E of part 182 remain reserved. CBP is reviewing these reserved sections and paragraphs because of outstanding policy considerations and they will be addressed in a subsequent rulemaking. With the exception of the specific sections discussed below, the USMCA drawback provisions contained in subpart E are substantially similar to the NAFTA drawback provisions contained in part 181.

In § 182.44(d), *Substitution manufacturing drawback under 19 U.S.C. 1313(b)*, CBP is allowing substitution using the 8-digit HTSUS subheading number standard for the USMCA. *See* 19 U.S.C. 4534(b). This 8-digit HTSUS subheading number standard is the standard previously provided for in section 906, *Drawback and Refunds*, of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122, February 24, 2016). CBP is adding a paragraph (d)(2), *Special rule for sought chemical elements*, in § 182.44, that was not part of NAFTA drawback. This paragraph (d)(2) is intended to clarify the term “same kind and quality” as it applies to sought chemical elements.

The USMCA drawback provisions in § 182.45 include a few differences from NAFTA drawback. In § 182.45, CBP has made changes to paragraph (d), *Certain goods exported to*

Canada or Mexico, regarding, *inter alia*, certain sugar tariffs that are excluded from the lesser of duty rule as provided for in 19 U.S.C. 4534(a)(6). In § 182.45, CBP also has added new paragraph (e), *Certain goods exported to Canada*, as provided for in 19 U.S.C. 4534(a)(7) and (a)(8), and a new paragraph (f), *Certain goods that are exported or deemed exported*, as provided for in 19 U.S.C. 4534(a)(3).

The USMCA did not provide for the time or method of filing a USMCA drawback claim. Accordingly, CBP has made conforming changes to the procedures in § 182.46, *Filing of drawback claim*, to better align with the general requirements of part 190, *Modernized Drawback*, as provided for in 19 U.S.C. 1313, as amended. These conforming changes will ensure a more uniform approach to the filing and processing of all drawback claims by requiring claims to be filed within 5 years after the date of importation and to be transmitted electronically in the Automated Commercial Environment (ACE).

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, including the applicability of these provisions (§ 182.71), verification of claim for preferential tariff treatment (§ 182.72), notification and response procedures (§ 182.73), verification visit procedures (§ 182.74), determinations of origin (§ 182.75), and repeated false or unsupported preference claims (§ 182.76).

Section 182.71, *Applicability*, states that subpart G contains the general origin verification and determination provisions applicable to goods claiming USMCA preferential tariff treatment. USMCA Articles 5.9 and 5.10 and the Uniform Regulations regarding origin procedures address general verification and determinations of origin.

Additional verification procedures that apply to textile and apparel goods and automotive goods will be set forth in Subpart H, *Textile and Apparel Goods*, and Subpart I, *Automotive Goods*, in part 182. These subparts will be included in a subsequent rulemaking to be published

in the *Federal Register* at a later date. Please refer to the CBP website at <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA> for more information, including the U.S. USMCA Implementing Instructions, regarding verifications of textile and apparel goods and automotive goods.

Section 182.72, *Verification of claim for preferential tariff treatment*, describes the means that CBP may use to conduct a verification, contains the provisions related to verifications of a material, states that CBP will accept information directly from the importer, exporter, or producer during a verification, and contains the accounting principles that apply to a verification. A claim for USMCA preferential tariff treatment will be subject to such verification as CBP deems necessary. A verification described in subpart G of part 182 may be conducted by a Center of Excellence and Expertise (Center) or by Regulatory Audit and Agency Advisory Services. In accordance with USMCA Article 5.9.2, CBP may initiate the verification of goods imported into the United States under the USMCA with the importer, or with the exporter or producer who completed the certification of origin.

A verification of a claim for USMCA preferential tariff treatment may be conducted by means of one or more of the following: requests for information, including documents, from the importer, exporter, or producer; questionnaires seeking information, including documents, from the importer, exporter, or producer; verification visits to the premises of the exporter or producer in Mexico or Canada in order to request information, including documents, and to observe production processes and facilities; and any other procedure to which the USMCA countries may agree.

As described in § 182.72(b), when conducting a verification of a 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 any of the verification means set forth in § 182.72(a). Please note that CBP believes that the term “material producer” and our application of the verification of materials in part 182 to be sufficiently broad

to encompass a verification of either a material producer or a material supplier. CBP encourages public comment on this issue, including whether a material supplier should be separately accounted for in the regulations. In accordance with the Uniform Regulations regarding origin procedures,⁷ with the exception of the notification to the importer of the initiation of a verification (§ 182.73(c)) and the determination of origin provisions (§ 182.75), subpart G applies when CBP is conducting a verification of a material.

Section 182.73, *Notification and response procedures*, contains the notification and response procedures for requests for information, questionnaires, and verification visits. Paragraph (a) specifies the contents of a request for information and a questionnaire, in accordance with USMCA Article 5.9.5, and that the importer, exporter, or producer must make records available for inspection by a CBP official during a verification. Paragraph (b) states that, prior to conducting a verification visit in Canada or Mexico, CBP will provide the exporter or producer with a notification stating the intent to conduct a verification visit, and provides the contents of that notification in accordance with USMCA Article 5.9.5. Paragraph (c) sets forth the importer notification that is required, pursuant to USMCA Article 5.9.6 and the Uniform Regulations regarding origin procedures, when CBP initiates a verification with the exporter or producer. Paragraph (d) provides the means of communication that CBP may use to contact the exporter or producer. In accordance with USMCA Article 5.9.18, all communication to the exporter or producer will be sent by any means that can produce a confirmation of receipt, with the Uniform Regulations regarding origin procedures specifying the specific means. Paragraph (e) contains information regarding when the time periods in subpart G begin, and paragraph (f) sets forth the amount of time that the importer, exporter, or producer has to respond to a request

⁷ See Uniform Regulations regarding origin procedures, Origin Verifications Section, paragraph 10, which states that where the customs administration of a USMCA country, in conducting an origin verification of a good imported into its territory under USMCA Article 5.9, conducts an origin verification of a material that is used in the production of the good, the origin verification of that material is expected to be conducted in accordance with the procedures set out in: USMCA Article 5.9(1), (5), (7 through 11), (13), and (18); and paragraphs 3, 6, 13, 14, and 15 of the Origin Verifications Section of the Uniform Regulations regarding origin procedures.

for information and a questionnaire, and that an exporter or producer has to consent to or deny the verification visit.

Section 182.74, *Verification visit procedures*, sets forth the verification visit procedures applicable to CBP when it is conducting a verification visit of an exporter or producer in Canada or Mexico. CBP may conduct a verification visit of the exporter or producer's premises in-person or remotely. The same verification visit procedures apply to both in-person and remote verification visits, including the notification of a verification visit to the exporter or producer whose premises are to be visited (§ 182.73(b)), the response time for responding to a notification of a verification visit (§ 182.73(f)(2)), the written consent required prior to the verification visit (§ 182.74(a)), the option to request a postponement of the visit (§ 182.74(b)), the records that must be made available for inspection by a CBP official conducting the verification, the facilities provided for that inspection (§ 182.74(c)), and the right to have observers (§ 182.74(d)).

Section 182.75, *Determinations of origin*, sets forth the contents of a determination of origin and the parties that will receive the determination of origin. While USMCA Article 5.9.14 only requires that a USMCA country provide a written determination of origin to the importer, and the exporter or producer that completed the certification of origin and is the subject of a verification, CBP has decided to extend the parties to whom it will issue a determination of origin. As stated in § 182.75(b), CBP will issue the determination of origin to the importer, and to 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 to ensure that the same parties receive both the intent to deny and the determination of origin. This determination of origin will be issued to these parties within 120 days or, in exceptional cases and upon notification to the appropriate parties, within 210 days, after CBP has determined that it has received all the information necessary to issue a determination in accordance with USMCA Article 5.9.15.

USMCA Article 5.9.15 requires the USMCA country conducting the verification to, as expeditiously as possible and within 120 days after it has received all the information necessary (including any information collected pursuant to a verification request to an exporter or producer) to make the determination and provide the written determination to the appropriate parties. The Uniform Regulations regarding origin procedures further clarify that “all the information necessary” includes information that may be required regarding the materials used in the production of a good or any assistance requested under USMCA Article 5.9.8 during a verification from another USMCA country. Pursuant to USMCA Article 5.9.15, the USMCA country may extend this 120-day period, in exceptional cases, for up to 90 days after notifying the importer, and any exporter or producer who is subject the verification or provided information during the verification. CBP has decided to provide this notification of the extension to all parties to whom it will issue a determination of origin pursuant to 19 CFR 182.75(b), including to 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.

Paragraph (c) of § 182.75 contains the provisions that apply to negative determinations of origin when CBP intends to deny USMCA preferential tariff treatment. This paragraph sets forth the circumstances under which CBP must send a request for information to the exporter or producer prior to issuing a negative determination in accordance with USMCA Article 5.9.4, the reasons that CBP may deny preferential tariff treatment, the intent to deny provision, and the additional requirements that apply when CBP issues a negative determination. Paragraph (c)(2) contains the reasons that CBP may deny USMCA preferential tariff treatment as set forth in USMCA Article 5.10.2. CBP will amend paragraph (c)(2) in a subsequent rulemaking to be published in the *Federal Register* at a later date to reflect the application of the USMCA Article 5.10.2 reasons for denial to textile and apparel goods and automotive goods and to ensure that

paragraph (c)(2) contains a comprehensive list of the reasons for denial with the appropriate cross-references.

As described above, pursuant to USMCA Article 5.9.16, prior to issuing a written determination of origin, if the USMCA country intends to deny USMCA preferential tariff treatment, the USMCA country must inform the importer, and any exporter or producer who is subject to the verification and provided information during the verification, of the preliminary results of the verification and provide those persons with a notice of intent to deny. Paragraph (c)(3) of § 182.75 contains the intent to deny provision, including that CBP will inform 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, of CBP's intent to deny preferential tariff treatment. As discussed above, CBP has decided to extend the parties who receive an intent to deny, beyond the requirements in USMCA Article 5.9.16, to ensure that the same parties receive the intent to deny and the determination of origin. The intent to deny will contain the preliminary results of the verification, the effective date of the denial of preferential tariff treatment, and a notice to the importer, exporter, or producer that CBP will provide 30 days to submit additional information, including documents, related to the preferential tariff treatment of the good. Pursuant to paragraph (c)(4), if, 30 days after the importer receives the intent to deny, CBP determines that one or more of the reasons for the denial of preferential tariff treatment continues to apply, CBP will issue a negative determination of origin. In addition to the contents of the determination set forth in § 182.75(a), 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, unless CBP determines that there is a pattern of conduct of false or unsupported representations pursuant to § 182.76. Pursuant to 19 U.S.C. 1514(e), CBP is authorized to provide exporters or producers who receive a negative determination of origin with the entry number and any other entry information considered necessary to allow the exporter or producer to exercise its protest rights under 19 U.S.C. 1514

and part 174, unless CBP determines that there is a pattern of conduct of false or unsupported representations pursuant to 19 U.S.C. 1514(f). CBP will be amending part 174 to allow exporters and producers to exercise their protest rights in a subsequent rulemaking to be published in the *Federal Register* at a later date.

Section 182.76, *Repeated false or unsupported preference claims*, states that, in accordance with USMCA Article 5.9.17, if a verification reveals a pattern of conduct by the importer, exporter, or producer of false or unsupported representations that a good imported into the United States qualifies for USMCA preferential tariff treatment, CBP may withhold preferential tariff treatment for entries of identical goods until CBP determines that representations of that person are in conformity with part 182 and with General Note 11, HTSUS.

As explained in more detail above in Section III.F., *Subpart A—General Provisions*, CBP has a duty to ensure the protection of confidential business information. In order to ensure compliance with the applicable U.S. statutory and regulatory provisions, CBP has decided to apply the confidentiality regulations in § 182.2 to any of the notifications made during a verification that potentially involve information disclosures to third parties. These include CBP's notification of the initiation of a verification to the importer (§ 182.73(c)), sending a request for information to the exporter or producer prior to issuing a negative determination (§ 182.75(c)(1)), the issuance of a positive or negative determination of origin (§ 182.75), and the issuance of the intent to deny (§ 182.75(c)(3)). The provision that allows the importer, exporter, or producer to send information directly to CBP to protect its proprietary information is set forth in § 182.72(c).

Subpart I—Automotive Goods

Subpart I of part 182 pertains to automotive goods. The regulations in subpart I, which are currently reserved as §§ 182.91 – 182.93, may be more expansive than previously anticipated. To allow for this possibility, the numbering structure of the regulations in subpart J

has been modified, as explained below. The actual text of the subpart I regulations will be included in a subsequent rulemaking to be published in the *Federal Register* at a later date.

Subpart J—Commercial Samples and Goods Returned after Repair or Alteration

Subpart J (19 CFR 182.111 – 182.112) provides for the duty-free treatment of commercial samples of negligible value and goods re-entered after repair or alteration in Canada or Mexico. The regulations in subpart J, which were previously reserved as § 182.101 and § 182.102, are redesignated as § 182.111 and § 182.112 due to changes in the numbering structure of subpart I of part 182, discussed above.

Commercial Samples

Section 182.111 defines *commercial samples of negligible value*, based on Article 2.1 of the USMCA, as commercial samples which have a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of Canada or Mexico; or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples. These commercial samples of negligible value qualify for duty-free entry from Canada or Mexico, in accordance with Article 2.9 of the USMCA, only if the samples are imported solely for the purpose of soliciting orders for foreign goods or services.

Goods Re-entered after Repair or Alteration in Canada or Mexico

Section 182.112 sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Canada or Mexico. This section also contains the conditions under which these goods are not eligible for duty-free treatment and provides the documentation requirements. The documentary requirements set forth in § 10.8(a), (b), and (c) apply to goods claiming duty-free treatment under § 182.112. While CBP is aware that under ordinary circumstances § 10.8 applies to articles claimed to be subject to duty on the value of the repairs or alterations performed abroad, for purposes of the USMCA, the same documentation requirements in § 10.8(a), (b), and (c) apply in connection with the entry of goods

returned after repairs or alterations from Canada or Mexico which are claimed to be duty-free under the USMCA.

Subpart K—Penalties

Subpart K of part 182 (19 CFR 182.121 – 182.124) sets forth penalties provisions, including those related to general penalties under the USMCA (§ 182.121), corrected claim or certification of origin by importers (§ 182.122), corrected certification of origin by U.S. exporters or producers (§ 182.123), and the framework for correcting claims or certifications of origin (§ 182.124). The regulations in subpart K, which were previously reserved as §§ 182.111 – 182.114, are redesignated as §§ 182.121 – 182.124 due to changes in the numbering structure of subparts I and J of part 182, as discussed above. These provisions are in accordance with Articles 5.13, 5.4.2, 5.6.3, and 7.18 of the USMCA.

As stated in § 182.121, except as otherwise provided in subpart K, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related U.S. laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the U.S. laws and regulations relating to the USMCA. An importer who makes a corrected claim or certification of origin, and an exporter or producer who provides written notification of an incorrect certification of origin will not be subject to civil or administrative penalties under 19 U.S.C. 1592 if the corrected claim, certification of origin, or written notification is made promptly and voluntarily. Section 182.124, *Framework for correcting claims or certifications of origin*, defines “promptly and voluntarily” for these purposes, provides that in cases involving fraud or subsequent incorrect claims a person may not voluntarily correct a claim or certification of origin, sets forth the requirements for the statement that must accompany each corrected claim or certification of origin, and requires that a U.S. importer who makes a corrected claim must tender any actual loss of duties and merchandise processing fees, if applicable.

G. Part 190

Part 190, *Modernized Drawback*, sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, as amended. CBP is amending part 190 to make conforming edits to include USMCA drawback claims. The scope provision in § 190.0 is amended to clarify that additional drawback provisions relating to the USMCA are contained in subpart E of part 182. Section 190.0a addresses claims filed under NAFTA and CBP is amending the paragraph heading of § 190.0a to reflect that this section is applicable to claims filed under both NAFTA and the USMCA. Section 190.0a is also amended to clarify that USMCA drawback claims filed under the provisions of part 182 must be filed separately from claims filed under the provisions of part 190 (currently it only lists NAFTA drawback claims filed under part 181). And lastly, § 190.51 provides the process for completion of drawback claims and CBP is making conforming changes such as referencing the USMCA and part 182 to indicate that the same process is used for both NAFTA drawback and USMCA drawback claims.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under section 553 of 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, consider public comments in deciding on the content of the final amendments, and publish 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 is promulgating several of the U.S. domestic regulations necessary to implement the preferential tariff treatment and customs related provisions of the USMCA, which is a trilateral agreement negotiated between the United States, Mexico, and Canada. However, CBP is soliciting comments on this IFR and will consider all comments received before issuing a final rule.

For the same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3). The USMCA entered into force on July 1, 2020. CBP provided guidance to the public on how to comply with the requirements of the USMCA by posting on the CBP website, available at <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA>, the U.S. USMCA Implementing Instructions, which were issued on March 25, 2020 and updated on June 30, 2020. The provisions of this IFR codify several of these Implementing Instructions. A delayed effective date would cause additional confusion and would be impractical, unnecessary, and contrary to public interest.

B. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 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 both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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

C. 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.

D. Paperwork Reduction Act

The collection of information in this document has been approved by OMB in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under OMB control numbers 1651-0117, 1651-0098, and 1651-0023. 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. The collections of information and recordkeeping requirements related to this rule have been approved by OMB under an emergency revision and extension of collection number 1651-0117 (Free Trade Agreements), an emergency revision of collection number 1651-0098 (NAFTA Regulations and Certificate of Origin), and an emergency revision and extension of collection number 1651-0023 (CBP Form 28 Request For Information). The revision of collection number 1651-0117 is necessary for CBP to collect the information needed to implement the USMCA. The revision of collection number 1651-0023 is necessary to reflect an increase in burden hours due to the use of CBP Form 28 for an additional purpose: requesting additional information needed for enforcing the USMCA. The revision of collection number 1651-0098 is necessary to reflect the reduction in burden hours that results from the USMCA superseding NAFTA and the repeal of the NAFTA Implementation Act, as of the USMCA's entry into force date of July 1, 2020. Importers, who did not claim preferential tariff treatment at the time of importation, have one year from the date of importation of the originating goods to file post-importation claims. These importers may need to use the NAFTA Certificate of Origin to file a post-importation claim for goods from Canada and Mexico entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020 during that one-year time period. Once one year has elapsed, CBP will discontinue this information collection. The likely respondents for these information collections are importers, exporters, producers, and customs brokers.

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

Free Trade Agreements

Estimated Number of Annual Respondents: 4,699,460

Estimated Number of Annual Responses per Respondent: 1.00034

Estimated Total Annual Responses: 4,701,060

Estimated Time per Response: 2 hours

Estimated Total Annual Burden Hours: 9,402,120

NAFTA Certificate of Origin

Estimated Number of Annual Respondents: 13,000

Estimated Number of Annual Responses per Respondent: 1

Estimated Total Annual Responses: 13,000

Estimated Time per Response: 2 hours

Estimated Total Annual Burden Hours: 26,000

NAFTA Questionnaire

Estimated Number of Annual Respondents: 400

Estimated Number of Annual Responses per Respondent: 1

Estimated Total Annual Responses: 400

Estimated Time per Response: 2 hours

Estimated Total Annual Burden Hours: 800

NAFTA Motor Vehicle Averaging Election

Estimated Number of Annual Respondents: 11

Estimated Number of Annual Responses per Respondent: 1.28

Estimated Total Annual Responses: 14

Estimated Time per Response: 1 hour

Estimated Total Annual Burden Hours: 14

CBP Form 28 Request for Information

Estimated Number of Annual Respondents: 62,000

Estimated Number of Annual Responses per Respondent: 1

Estimated Total Annual Responses: 62,000

Estimated Time Per Response: 2 hours

Estimated Total Annual Burden Hours: 124,000

Comments concerning the collection of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for Customs and Border Protection, Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177. 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 **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

V. Signing Authority

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations related to certain customs revenue functions.

VI. List of Subjects

19 CFR Part 10

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

19 CFR Part 102

Canada, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR 132

Imports.

19 CFR 134

Labeling, Packaging and containers.

19 CFR Part 163

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

19 CFR Part 182

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

19 CFR Part 190

Alcohol and alcoholic beverages, Claims, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

For the reasons stated above, amend parts 10, 102, 132, 134, 163, 182, and 190 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 authority citation for part 10 is revised 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.

§ 10.8 [Amended]

2. In § 10.8(a)(2) amend the declaration by adding the words “(unless subject to USMCA drawback)” after the words “without the benefit of drawback.”

PART 102 – RULES OF ORIGIN

3. The general authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3592, 4513.

§ 102.0 [Amended]

4. Amend § 102.0 as follows:

a. In the beginning of the second sentence, remove the word “These” and add in its place the words “Under NAFTA, these”; and

b. Add a new third sentence.

The addition reads as follows:

§ 102.0 Scope. * * * The rules set forth in §§ 102.1 through 102.18 and 102.20 also determine the country of origin for marking purposes of imported goods under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA). ***

* * * * *

5. In § 102.1:

a. Paragraph (a) is amended by removing the reference to “(m)(5), (m)(6), and (m)(7)” and adding in its place the reference to “(n)(5), (n)(6), and (n)(7)”;

- b. Paragraph (i) is amended by removing the reference to “(m)(5), (m)(6), and (m)(7)” and adding in its place the reference to “(n)(5), (n)(6), and (n)(7)”;
- c. Paragraphs (l) through (p) are redesignated as paragraphs (m) through (q);
- d. A new paragraph (l) is added;
- e. In redesignated paragraph (q)(1), add the words “under NAFTA” after the word “good”;
- f. In redesignated paragraph (q)(2), add the words “under NAFTA” after the word “material”; and
- g. Add paragraph (q)(3).

The additions read as follows:

§ 102.1 Definitions.

* * * * *

(1) *Inventory management method.* “Inventory management method” means:

(1) Averaging;

(2) “Last-in, first-out;”

(3) “First-in, first-out;” or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles (GAAP) of the country in which the production is performed or is otherwise accepted by that country.

* * * * *

(q) * * *

(3) In the case of a good or material under the USMCA, its customs value or transaction value within the meaning of Appendix A to part 182 of this chapter.

§ 102.11 [Amended]

6. Amend § 102.11(b)(2) by removing the phrase “provided under the appendix to part 181 of this chapter”.

§ 102.12 [Amended]

7. Amend § 102.12(b) by removing the phrase “provided under the appendix to part 181 of the Customs Regulations”.

§ 102.19 [Amended]

8. In § 102.19, add paragraph (c) to read as follows:

§ 102.19 NAFTA preference override.

* * * * *

(c) Paragraphs (a) and (b) of this section apply only to goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020.

PART 132—QUOTAS

9. The general and specific authority citations for part 132 continue to read as follows:

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

Sections 132.15, 132.17, and 132.18 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; additional U.S. Note 8 to Chapter 17, HTSUS; and subchapter II of Chapter 99, HTSUS, respectively), 1484, 1508.

§ 132.17 [Amended]

10. Amend § 132.17 by revising the first sentence of paragraph (a) to read as follows:

(a) *** For sugar-containing products defined in 15 CFR 2015.2(a), and as described in paragraph 15 of Appendix 2, Tariff Schedule of the United States - (Tariff Rate Quotas), to Annex 2-B of Chapter 2 of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), for which preferential tariff treatment is claimed under the USMCA, and that are products of a participating country, as defined in 15 CFR 2015.2(e), the importer must possess a valid export certificate in order to claim the in-quota tariff rate of duty on the products at the time they are entered or withdrawn from warehouse for consumption.

PART 134—COUNTRY OF ORIGIN MARKING

11. The general authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1624.

12. Amend § 134.1 as follows:

a. Revise the second sentence of paragraph (b);

b. In paragraph (d), add the words “or USMCA” after the words “good of a NAFTA” each place it appears and remove the words “NAFTA Marking Rules” each place they appear and add in their place the words “part 102 Rules”;

c. In paragraph (g):

i. Add the words “*or USMCA*” after the term “*NAFTA*” in the paragraph heading;

ii. Add the words “or USMCA” after the words “good of a NAFTA”; and

iii. Remove the words “NAFTA Marking Rules” and add in their place the words “part 102 Rules”;

e. Add a second sentence to paragraph (h);

f. Revise paragraph (i);

g. Revise paragraph (j); and

h. Add paragraph (l).

The revisions and additions read as follows:

§ 134.1 Definitions.

* * * * *

(b) * * * Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; however, for a good of a NAFTA or

USMCA country, the marking rules set forth in part 102 of this chapter (hereinafter referred to as the part 102 Rules) will determine the country of origin.

* * * * *

(h) * * * NAFTA is not applicable to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

(i) *NAFTA or USMCA country*. “NAFTA or USMCA country” means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of NAFTA and Chapter 1, Section C of the USMCA.

(j) *Part 102 Rules*. “Part 102 Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country, as set forth in part 102 of this chapter. The rules also apply to determine the country of origin for marking purposes for goods imported under the USMCA.

* * * * *

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

§ 134.22 [Amended]

13. Amend § 134.22 as follows:

- a. In paragraph (b), add the words “or USMCA” after the term “NAFTA”;
- b. In paragraph (d)(2):
 - i. Add the words “*or USMCA*” after the term “*NAFTA*” in the paragraph heading; and
 - ii. Add the words “or USMCA” after the term “NAFTA” in the first sentence; and
- c. In paragraph (e)(1), add the words “or USMCA” after the term “NAFTA”.

§ 134.23 [Amended]

14. Amend § 134.23(a) by adding the words “or USMCA” after the term “NAFTA” in the first sentence.

§ 134.24 [Amended]

15. Amend § 134.24 by adding the words “or USMCA” after the term “NAFTA” each place it appears.

§ 134.32 [Amended]

16. Amend § 134.32 as follows:

- a. In paragraph (h), add the words “or USMCA” after the term “NAFTA”;
- b. In paragraph (p), add the words “or USMCA” after the term “NAFTA”; and
- c. In paragraph (q), add the words “or USMCA” after the term “NAFTA”.

§ 134.35 [Amended]

17. Amend § 134.35 as follows:

- a. In paragraph (a), add the words “*or USMCA*” after the term “*NAFTA*” in the paragraph heading;
- b. In paragraph (b):
 - i. Add the words “*or USMCA*” after the term “*NAFTA*” in the paragraph heading;
 - ii. Add the words “or USMCA” after the words “goods of a NAFTA” in the first sentence; and
 - iii. Remove the words “NAFTA Marking Rules” and add in their place the words “part 102 Rules”.

§ 134.43 [Amended]

18. Amend § 134.43 by adding the words “or USMCA” after the term “NAFTA” in each place it appears.

§ 134.45 [Amended]

19. Amend § 134.45(a)(2) by adding the words “or USMCA” after the term “NAFTA”.

PART 163 – RECORDKEEPING

20. The general and specific authority citations for part 163 continue to read as follows:

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

Section 163.2 also issued under 19 U.S.C. 3904, 3907.

§ 163.0 [Amended]

21. Amend § 163.0 as follows:

a. Add the words “and the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)” after the words “North American Free Trade Agreement”;

b. Add the words “and 182” after the number “181”.

22. Amend § 163.2(c) by:

a. Adding the words “*and producers*” after the word “*exporters*” in the paragraph heading;

b. Redesignating paragraph (c)(2) as paragraph (c)(3);

c. Adding a new paragraph (c)(2).

The addition reads as follows:

§ 163.2 Persons required to maintain records.

* * * * *

(c) * * *

(2) *USMCA*. Any exporter or producer who completes a certification of origin or a producer who provides a written representation for a good exported from the United States to Canada or Mexico pursuant to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) must maintain records in accordance with part 182 of this chapter.

* * * * *

PART 182 – UNITED STATES-MEXICO-CANADA AGREEMENT

23. 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 A—General Provisions

24. Add § 182.1 to read as follows:

§ 182.1 General definitions.

The definitions applicable to rules of origin are contained in Appendix A. This section sets forth the general definitions used throughout this part. As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this part:

Canada, when used in a geographical rather than governmental context, means the “Territory” of Canada as defined in Appendix A to this part;

Claim for preferential tariff treatment means a claim that a good is entitled to the customs duty rate applicable under the USMCA to an originating good and to an exemption from the merchandise processing fee;

Commercial importation means the importation of a good into the United States, Canada, or Mexico for the purpose of sale, or any commercial, industrial, or other like use.

Customs duty includes a duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994;

(2) Fee or other charge in connection with the importation commensurate with the cost of services rendered;

(3) Antidumping or countervailing duty; and

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff-rate quotas, or tariff preference levels;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

Days means calendar days, and includes Saturdays, Sundays and holidays;

Enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

Exporter means an exporter located in the territory of a USMCA country and an exporter required under this part to maintain records regarding exportations of a good;

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

Goods means merchandise, product, article, or material;

Goods of a USMCA country means domestic products as these are understood in the GATT 1994 or such goods as the USMCA country may agree, and includes originating goods of a USMCA country;

HTSUS means the Harmonized Tariff Schedule of the United States as promulgated by the U.S. International Trade Commission;

Identical goods means goods that are the same in all respects, including physical characteristics, quality, and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods;

Importer means an importer located in the territory of a USMCA country and an importer required under this part to maintain records regarding importations of a good;

Indirect material means a material used or consumed in the production, testing, or inspection of a good but not physically incorporated into the good, or a material used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (1) Fuel and energy,
- (2) Tools, dies, and molds,
- (3) Spare parts and materials used or consumed in the maintenance of equipment or buildings,
- (4) Lubricants, greases, compounding materials and other materials used or consumed in production or used to operate equipment or buildings,
- (5) Gloves, glasses, footwear, clothing, safety equipment, and supplies,
- (6) Equipment, devices and supplies used or consumed for testing or inspecting the goods,
- (7) Catalysts and solvents, and
- (8) Any other material that is not incorporated into the good but if the use in the production of the good can reasonably be demonstrated to be a part of that production;

Material means a good that is used in the production of another good, and includes a part or ingredient;

Mexico, when used in a geographical rather than governmental context, means the “Territory” of Mexico as defined in Appendix A to this part;

Originating, when used with regard to a good or material, means a good or material qualifying as originating under the rules of origin set forth in General Note 11, HTSUS, and in Appendix A to this part;

Person means a natural person or an enterprise;

Post-importation duty refund claim means a claim filed by the importer of a good for a refund of any excess customs duties at any time within one year after the date of importation of the good where the good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made.

Preferential tariff treatment means the customs duty rate applicable under the USMCA to an originating good;

Producer means a person who engages in the production of a good;

Series of importations means two or more customs entries covering a good arriving the same day from the same exporter and consigned to the same person;

United States, when used in a geographical rather than governmental context, means the territory of the United States as defined in Appendix A to this part;

Used means used or consumed in the production of a good;

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.

USMCA country means a Party to the USMCA;

Value means the value of a good or material for the purpose of calculating customs duties or for the purpose of applying this part;

WTO means the World Trade Organization; and

WTO Agreement means the *Marrakesh Agreement Establishing the World Trade Organization* done at Marrakesh on April 15, 1994.

25. Add § 182.2 to subpart A to read as follows:

§ 182.2 Confidentiality.

(a) *Maintaining confidentiality.* Subject to paragraph (b) of this section, CBP must maintain the confidentiality of the information that it receives from the public when the information is considered trade secrets under the Trade Secrets Act (18 U.S.C. 1905), personally identifiable information under the Privacy Act (5 U.S.C. 552a), or privileged or confidential commercial or financial information. This information must be maintained as confidential in accordance with part 103 of this chapter, 6 CFR part 5, and all other applicable statutes and regulations.

(b) *Authorized disclosures.* CBP may only disclose the confidential information in paragraph (a) of this section to third parties and to other USMCA countries for purposes of administration or enforcement of the customs laws or if otherwise authorized by law, and pursuant to the routine uses of the systems of record notices (SORNs) for the trade systems maintained by CBP. This does not preclude the disclosure of confidential information to U.S. government authorities responsible for the administration and enforcement of USMCA requirements, such as the Department of Labor, and of customs and revenue matters.

Subpart B—Import Requirements

26. Add § 182.11 to read as follows:

§ 182.11 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim.* An importer may make a claim for USMCA preferential tariff treatment, including an exemption from the merchandise processing fee, based on a written or electronic certification of origin, as specified in § 182.12, completed by the importer, exporter, or producer for the purpose of certifying that a good qualifies as an originating good.

(b) *Making a claim.* The claim is made by including on the entry summary, or equivalent documentation, or by the method specified for equivalent reporting via a CBP-authorized electronic data interchange system, the letters “S” or “S+” as a prefix to the subheading of the HTSUS under which each originating good is classified.

(c) *Corrected claim.* If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the certification of origin is based on inaccurate information or is otherwise invalid, the importer must promptly and voluntarily correct the claim or certification of origin, pay any duties that may be due, and submit a statement either in writing to the CBP office where the original claim was filed or via a CBP-authorized electronic data interchange system in accordance with § 182.124 of this part (*see* §§ 182.122 and 182.124 of this part).

27. Add § 182.12 to read as follows:

§ 182.12 Certification of origin.

(a) *General.* An importer who makes a claim, pursuant to § 182.11(b), based on a certification of origin completed by the importer, exporter, or producer that the good is originating must submit, at the request of CBP, a copy of the certification of origin. The certification of origin:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) May be provided on an invoice or any other document, except an invoice or commercial document issued in the territory of a non-USMCA country;

(3) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made;

(4) Must include the following information to be valid:

(i) Whether the certifier is the importer, exporter, or producer in accordance with this subpart;

(ii) The certifier's name, title, address (including country), telephone number, and e-mail address;

(iii) The exporter's name, address (including country), e-mail address, and telephone number if different from the certifier, unless the producer is completing the certification of origin and does not know the identity of the exporter;

(iv) The producer's name, address (including country), e-mail address, and telephone number, if different from the certifier or exporter; or if there are multiple producers, "Various" or a list of producers (*see also* paragraph (c) of this section);

(v) If known, the importer's name, address, e-mail address, and telephone number; or if there are multiple importers, "Various" or a list of importers;

(vi) The legal name, address (including country), telephone number, and email address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification;

(vii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the Harmonized System (HS) nomenclature;

(viii) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 11, HTSUS;

(ix) The applicable rule of origin set forth in General Note 11, HTSUS, under which the good qualifies as an originating good;

(x) In the case of a good listed in Schedule II of Appendix A of this part, the following statement must be included: "Schedule II of the USMCA Rules of Origin Uniform Regulations";

(xi) If the certification of origin covers a single shipment of a good, the invoice number related to the exportation, if known;

(xii) In case of a blanket certification issued with respect to multiple shipments of identical goods within any period specified in the certification of origin, not exceeding 12 months from the date of certification, the period that the certification covers; and

(5) Must include the following statement: “I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. 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.”

(b) *Address.* For the purposes of the certification of origin provided for in paragraph (a) of this section:

(1) The address of the exporter provided under paragraph (a)(4)(iii) is the place of export of the good in a USMCA country’s territory;

(2) The address of a producer provided under paragraph (a)(4)(iv) is the place of production of the good in a USMCA country’s territory; and

(3) The address of the importer provided under paragraph (a)(4)(v) must be in a USMCA country’s territory.

(c) *Confidentiality of producer information.* For the purposes of the information provided under paragraph (a)(4)(iv) of this section, a person that wishes for this information to remain confidential may state “Available upon request by the importing authorities.”

(d) *Responsible official or agent.* The certification of origin provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(e) *Language.* The certification provided for in paragraph (a) of this section must be completed in English, French, or Spanish. If the certification of origin is not in English, CBP may require the importer to submit an English translation of the certification.

(f) *Basis of a certification of origin.* (1) A certification of origin may be completed by the importer, exporter, or producer of the good on the basis of:

(i) The certifier of the certification of origin of the good having information, including documents, that demonstrate that the good is originating; or

(ii) In the case of an exporter who is not the producer of the good, reasonable reliance on the producer's written representation, such as in a certification of origin, that the good is originating.

(2) CBP may not require that an exporter or producer complete a certification of origin, or provide a certification of origin or written representation to another person.

(g) *Applicability of certification of origin.* The certification of origin provided for in paragraph (a) of this section may be applicable to:

(1) A shipment of goods into the United States, which may consist of:

(i) A single shipment of goods that results in the filing of one or more entries; or

(ii) More than one shipment of goods that results in the filing of one entry.

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(h) *Validity of certification of origin.* A certification of origin that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was completed.

28. Add § 182.13 to read as follows:

§ 182.13 Importer obligations.

(a) *General.* An importer who makes a claim for USMCA preferential tariff treatment:

(1) Will be deemed to have made a statement based on a valid certification of origin that the good qualifies as an originating good;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification of origin provided for in § 182.12; and

(3) Is responsible for submitting supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification of origin prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, information relied on by the exporter or producer in preparing the certification.

(b) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification of origin, provided that the importer promptly and voluntarily corrects the claim or certification of origin, pays any duties and merchandise processing fees, if applicable, that may be due, and submits a statement either in writing or via a CBP-authorized electronic data interchange system to the CBP office where the original claim was filed in accordance with § 182.124 (*see* §§ 182.122 and 182.124).

29. Add § 182.14 to read as follows:

§ 182.14 Certification of origin not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification of origin under § 182.12 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed \$2,500 in U.S. dollars.

(b) *Exception.* If CBP determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 182.12, CBP will notify the importer that for that importation the importer must submit to CBP a copy of the certification of origin. The

importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification of origin will result in denial of the claim for preferential tariff treatment.

30. Add § 182.15 to read as follows:

§ 182.15 Maintenance of records.

(a) *General.* An importer claiming USMCA preferential tariff treatment for a good must maintain for a minimum of five years from the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the USMCA, including the certification of origin and records related to transit and transshipment. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

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

31. Add § 182.16 to read as follows:

§ 182.16 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with applicable requirements under this subpart, including submission of a complete certification of origin prepared in accordance with §§ 182.12 and 182.14, when requested, CBP may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, CBP nevertheless may deny preferential tariff treatment to an originating good if the good is transported outside the territories of the USMCA countries, and at the request of CBP, the importer of the good does not provide evidence demonstrating to the satisfaction of CBP that the transit and transshipment conditions set forth in Appendix A of this part were met.

Subpart C—Export Requirements

32. Add § 182.21 to read as follows:

§ 182.21 Certification of origin for goods exported to Canada or Mexico.

(a) *Submission of certification of origin to CBP.* An exporter or producer who completes a certification of origin for a good exported from the United States to Canada or Mexico must provide a copy of the certification of origin (written or electronic) to CBP upon request.

(b) *Notification of errors in certification of origin.* An exporter or producer who completes a certification of origin for a good exported from the United States to Canada or Mexico and who has reason to believe that the certification contains or is based on incorrect information must promptly and voluntarily notify every person, in writing, to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via a CBP-authorized electronic data interchange system to CBP specifying the correction in accordance with § 182.124 (*see* §§ 182.123 and 182.124).

(c) *Maintenance of records—(1) General.* An exporter or producer who completes a certification of origin or a producer who provides a written representation for a good exported from the United States to Canada or Mexico must maintain, for a period of at least five years after the date the certification was completed, all records and supporting documents relating to the origin of a good for which the certification of origin was completed, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, value, and shipping of, and payment for, the good or material;

(ii) The purchase, cost, value, and shipping of, and payment for, all materials, including indirect materials, used in the production of the good or material; and

(iii) The production of the good in the form in which the good is exported or the production of the material in the form in which it was sold.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by a CBP official in the same manner as provided in part 163 of this chapter.

Subpart D—Post-Importation Duty Refund Claims

33. Add § 182.31 to read as follows:

§ 182.31 Right to make post-importation claim for preferential tariff treatment and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, 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 in accordance with 19 U.S.C. 1520(d) and the procedures set forth in § 182.32. Unless the importer fails to comply with the applicable requirements in this part, CBP may refund any excess customs duties by liquidation or reliquidation of the entry covering the good in accordance with § 182.33.

34. Add § 182.32 to read as follows:

§ 182.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification of origin prepared in accordance with § 182.12 demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest, petition, or request for reliquidation; and if any such protest, petition, or request for reliquidation has been filed, the statement must identify the filing by number and date.

35. Add § 182.33 to read as follows:

§ 182.33 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim made pursuant to § 182.32, CBP will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition, or request for reliquidation or judicial review.* If CBP determines that any protest, petition, or request for reliquidation relating to the good has not been finally decided, CBP will suspend action on the claim filed under § 182.32 until the decision on the protest, petition, or request for reliquidation becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, CBP will suspend action on the claim filed under § 182.32 until judicial review has been completed.

(c) *Allowance of claim—(1) Unliquidated entry.* If CBP determines that a claim for a refund filed under § 182.32 should be allowed and the entry covering the good has not been

liquidated, CBP will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If CBP determines that a claim for a refund filed under § 182.32 should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of customs duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, CBP will reliquidate the entry taking into account the claim for refund under § 182.32.

(d) *Denial of claim—(1) General.* CBP may deny a claim for a refund filed under § 182.32 if the claim was not filed timely, if the importer has not complied with the requirements of §182.32 or the other applicable requirements in this part, or if, following an origin verification, CBP determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied.

(2) *Unliquidated entry.* If CBP determines that a claim for a refund filed under § 182.32 should be denied and the entry covering the good has not been liquidated, CBP will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via a CBP-authorized electronic data interchange system.

(3) *Liquidated entry.* If CBP determines that a claim for a refund filed under § 182.32 should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest, petition, or request for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, CBP will provide notice of the denial and the reason for the denial to the importer in writing or via a CBP-authorized electronic data interchange system.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

36. Add § 182.41 to read as follows:

§ 182.41 Applicability.

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs 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. The provisions of this subpart apply to goods which are entered for consumption, or withdrawn from warehouse for consumption, into the United States on or after July 1, 2020. The requirements and procedures set forth in this subpart for USMCA drawback are in addition to the general definitions, requirements, and procedures for all drawback claims set forth in part 190 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for USMCA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing, and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

37. Add § 182.42 to read as follows:

§ 182.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption or withdrawn from warehouse for consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff-rate quotas or tariff preference levels; and

(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(j)(2) on goods exported to Canada or Mexico.

38. Add § 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 (*see* 19 U.S.C. 1313(j)(1));
- (b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (*see* 19 U.S.C. 1313(a)); or
- (c) Substituted by a good of the same kind and quality as defined in § 182.44(d) and used as a material in the production of another good that is subsequently exported to Canada or Mexico (*see* 19 U.S.C. 1313(b)).

39. Add § 182.44 to read as follows:

§ 182.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in § 182.45, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a USMCA drawback claim under this subpart, on the lower amount of:

- (1) The total duties paid or owed on the good in the United States; or
- (2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value will be determined, and the comparison between the duties referred to in paragraph (a)(1) of this section and the duties referred to in paragraph (a)(2) of this section will be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a)*. Upon presentation of the USMCA drawback claim under 19 U.S.C. 1313(a), in which 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 refunded may not exceed 99 percent of the duty paid on such imported merchandise into the United States.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b)*. Upon presentation of a USMCA drawback claim under 19 U.S.C. 1313(b), on which 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 is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported.

(1) *General*. For purposes of drawback under this subpart, the term “same kind and quality” has the same meaning as the 8-digit HTSUS substitution standard established in 19 U.S.C. 1313(b)(1) (*see* §§ 190.2 and 190.22(a)(1)(i) of this chapter).

(2) *Special rule for sought chemical elements*. For purposes of drawback under this subpart, for sought chemical elements, the term “same kind and quality” has the same meaning as the 8-digit HTSUS substitution standard established in 19 U.S.C. 1313(b)(4) (*see* § 190.22(a)(2) of this chapter).

(e) *Meats cured with imported salt*. Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than \$100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (*see* 19 U.S.C. 1313(f)).

(f) *Jet aircraft engines*. A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than \$100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition.* An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of § 182.45(b)(1) may be eligible for drawback under this section except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

40. Add § 182.45 to read as follows:

§ 182.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 182.44 if that good is originating under the rules of origin set out in General Note 11, HTSUS, and Appendix A of this part, and is:

(1) Subsequently exported to Canada or Mexico;

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

(3) Substituted by a good of the same 8-digit HTSUS subheading number and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

(b) *Claims under 19 U.S.C 1313(j)(1) for goods in same condition.* A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in § 182.44 .

(1) *Same condition defined.* For purposes of this subpart, a reference to a good in the “same condition” includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting, grading, or inspecting a good.

(2) *Commingling of fungible goods*—(i) *General*—(A) *Inventory of other than all non-originating goods*. Commingling of fungible originating and non-originating goods in inventory is permissible provided that the origin of the goods and the identification of entries for designation for same condition drawback are on the basis of an approved inventory management method set forth in the Appendix A to this part (*see* 19 CFR 102.1).

(B) *Inventory of the non-originating goods*. If all goods in a particular inventory are non-originating goods, identification of entries for designation for same condition drawback must be on the basis of one of the accounting methods in § 190.14 of this chapter, as appropriate.

(ii) *Exception*. Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c)*. 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) without regard to the limitation on drawback set forth in § 182.44. Such a good must be exported or destroyed within the statutory 5-year time period and in compliance with the requirements set forth in subpart D of part 190 of this chapter, as applicable.

(d) *Certain goods exported to Canada or Mexico.* A good provided for in U.S. tariff items 1701.13.20 or 1701.14.20 that is imported into the Customs territory of the United States under any re-export or like program that is used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of a good provided for in Canadian tariff item 1701.99.00 or Mexican tariff items 1701.99.01, 1701.99.02, and 1701.99.99 (relating to refined sugar), is eligible for drawback without regard to the limitation on drawback set forth in § 182.44. Same kind and quality for purposes of this subsection means that the imported good and the substituted good must be capable of being used interchangeably in the manufacture or production of the exported or destroyed articles with no substantial change in the manufacturing or production process.

(e) *Certain goods exported to Canada.* Goods identified in Article 2.5.6(g) of the USMCA and in 19 U.S.C. 4534(a)(7) and (8), if exported to Canada, are eligible for drawback without regard to the limitations on drawback set forth in § 182.44.

(f) *Certain goods that are exported or deemed exported.* Goods that are delivered:

(1) To a duty-free shop,

(2) For ship's stores or supplies for ships or aircrafts, or

(3) For the use in a project undertaken jointly by the United States and a USMCA country, and destined to become the property of the United States, are eligible upon exportation for drawback without regard to the limitations on drawback set forth in § 182.44.

41. Add § 182.46 to read as follows:

§ 182.46 Filing of drawback claim.

(a) *Time of filing.* A drawback claim under this subpart must be filed within 5 years after the date of importation of the goods on which drawback is claimed. No extension will be granted unless it is established that a CBP official was responsible for the untimely filing. Drawback will be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim.

(b) *Method of filing.* A drawback claim must be filed electronically through a CBP-authorized electronic system (*see* § 190.51 of this chapter).

42. Add § 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 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, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry filed under this subpart must be filed using the indicator “USMCA Drawback”.

(2) *Specific claims.* The following documentation, for the drawback claims specified below, 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 completed CBP Form 331, or its electronic equivalent, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

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

(C) [Reserved]

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) 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

(F) 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) *Same condition drawback claim under 19 U.S.C. 1313(j)(1)*. The following must be submitted in connection with a drawback claim covering a good in the same condition:

(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, and, if applicable, 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 above 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) *Notification of intent to export or waiver of prior notice.* CBP must be notified at least 5 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) *Evidence of exportation.* 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) *Waiver of right to drawback.* 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):

(A) Customs 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(b));

(B) [Reserved]

(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 5 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 subpart N of part 190 of this chapter.

(c) [Reserved]

43. Add § 182.49 to read as follows:

§ 182.49 Retention of records. All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer, including any person who transfers or enables another person to make or perfect a drawback claim, must be retained for at least three years from the date of liquidation of such claims or longer period if required by law (*see* §§ 190.10, 190.15, 190.38, and 190.175(c) of this chapter).

44. Add § 182.50 to read as follows:

§ 182.50 Liquidation and payment of drawback claims.

(a) *General.* When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 182.44 of this subpart or in accordance with the regular drawback calculation. The liquidation procedures of subpart H of part 190 of this chapter, as appropriate, will control for purposes of this subpart.

(b) [Reserved]

(c) *Accelerated payment.* Accelerated drawback payment procedures will apply as set forth in § 190.92 of this chapter, as appropriate. However, a person who receives drawback of duties under this procedure must repay the duties paid if a USMCA drawback claim is adversely affected thereafter by administrative or court action.

45. Add § 182.51 to read as follows:

§ 182.51 Prevention of improper payment of claims.

(a) *Double payment of claim.* The drawback claimant must certify to CBP that the claimant has not earlier received payment on the same import entry for the same designation of

goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant must repay any amount paid on the second claim.

(b) *Preparation of Certification of Origin.* The drawback claimant must, within 30 calendar days after the filing of the drawback claim under this subpart, submit to CBP a written statement as to whether the claimant has prepared, or has knowledge that another person has prepared, a certification of origin provided for under § 182.12 and pertaining to the goods which are covered by the claim. If, following such 30-day period, the claimant prepares, or otherwise learns of the existence of, any such certification of origin, the claimant must, within 30 calendar days thereafter, disclose that fact to CBP.

46. Add § 182.52 to read as follows:

§ 182.52 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 drawback has been granted under this subpart, the appropriate CBP official must reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under § 182.44.

47. Add § 182.54 to read as follows:

§ 182.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart is subject to such verification, including verification with the Canadian or Mexican customs administration, of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as CBP may deem necessary.

Subpart G—Origin Verifications and Determinations

48. Add § 182.71 to read as follows:

§ 182.71 Applicability.

This subpart contains the general origin verification and determination provisions applicable to goods claiming preferential tariff treatment under § 182.11(b) or § 182.32.

49. Add § 182.72 to read as follows:

§ 182.72 Verification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 182.11(b) or 182.32, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as CBP deems necessary. CBP may initiate the verification of goods imported into the United States under the USMCA with the importer, or with the exporter or producer who completed the certification of origin. A verification of a claim for preferential tariff treatment under the USMCA may be conducted by means of one or more of the following:

(1) Requests for information or questionnaires, including a request for documents, to the importer, exporter, or producer;

(2) Verification visits to the premises of the exporter or producer in Mexico or Canada in order to request information, including documents, and to observe production processes and facilities; and

(3) Any other procedure to which the USMCA countries may agree.

(b) *Verification of a material.* When conducting a verification of a 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 any of the verification means set forth in paragraph (a) of this section. With the exception of §§ 182.73(c) and 182.75, the provisions in this subpart also apply to the verification of a material and references to the term “producer” apply to a producer of a good or to a material producer.

(c) *Sending information directly to CBP.* During a verification, CBP will accept information, including documents, directly from an importer, exporter, or producer.

(d) *Applicable accounting principles.* When conducting a verification to which Generally Accepted Accounting Principles or an otherwise accepted inventory method may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the USMCA country in which the production is performed or from which the good is exported, as appropriate, or an otherwise accepted inventory management method as provided for in Appendix A of this part. If information, including documents, books and records, were not maintained accordingly, CBP will provide the importer, exporter or producer 30 days to record costs in accordance with Appendix A of this part.

50. Add § 182.73 to read as follows:

§ 182.73 Notification and response procedures.

(a) *Requests for information and questionnaires.* When conducting a verification through a request for information or a questionnaire as provided for in § 182.72(a)(1), CBP will send the importer, exporter or producer a written request for information, a written questionnaire, or its electronic equivalent, including a request for specific documentation to support the claim for preferential tariff treatment.

(1) *Contents.* The written request for information, written questionnaire, or its electronic equivalent will contain the following:

(i) The objective and scope of the verification, including the specific issue that the verification is seeking to resolve; and

(ii) Sufficient information to identify the good or material that is the subject of the verification.

(2) *Availability of records--(i) Verification of a good.* The importer, exporter, or producer must make the records, which are required to be maintained to demonstrate that the good qualifies for preferential tariff treatment under the USMCA, available for inspection by a CBP official conducting a verification. CBP may deny the claim for preferential tariff treatment

of the good for failure to maintain the required records or if a CBP official is denied access to the records.

(ii) *Verification of a material.* During the verification of a material, any records in the material producer's possession demonstrating that the material qualifies as originating must be made available for inspection by a CBP official conducting a verification. CBP may consider the material that is used in the production of the good and is the subject of the verification to be non-originating material if a CBP official is denied access to these records.

(b) *Notification of a verification visit.* Prior to conducting a verification visit in Canada or Mexico, CBP will provide the exporter or producer, using one of the communication means specified in paragraph (d)(2) of this section, with a notification stating the intent to conduct a verification visit and containing the following:

- (1) The objective and scope of the verification, including the specific issue that the verification is seeking to resolve;
- (2) Sufficient information to identify the good or material that is the subject of the verification;
- (3) A request for the written consent of the exporter or producer whose premises are going to be visited;
- (4) The legal authority for the visit;
- (5) The proposed date and location of the visit;
- (6) The specific purpose of the visit; and
- (7) The names and titles of the U.S. officials conducting the visit.

(c) *Importer notification.* When CBP initiates a verification by sending a request for information or questionnaire under paragraph (a) of this section to an exporter or producer or by sending a notification of a verification visit under paragraph (b) of this section, CBP will notify the importer claiming preferential tariff treatment of the good that CBP has initiated a verification of that good, subject to the confidentiality provisions in § 182.2.

(d) *Means of communications.* (1) For purposes of a verification, it is sufficient for CBP to use the contact information provided in the certification of origin for any communication sent to the importer, exporter, or producer.

(2) For purposes of a verification, CBP will send all communication to the exporter or producer by any means that can produce a confirmation of receipt including:

- (i) Electronic mail;
- (ii) International courier services;
- (iii) Certified or registered mail services; or
- (iv) A CBP-authorized electronic data interchange system.

(e) *Time periods.* Any time periods specified in this subpart begin from the date of confirmation of receipt, provided for in paragraph (d)(2) of this section, when sending communication to the exporter or producer, and begin from the date the communication is sent when sending communication to the importer.

(f) *Response time for a request for information, a questionnaire, and a notification of a verification visit--(1) Request for information and questionnaire.* When CBP sends a request for information or a questionnaire, the importer, exporter, or producer will have 30 days from the date specified in paragraph (e) of this section to respond and provide the requested documentation. CBP may deny the claim for preferential tariff treatment of the good, or consider the material that is used in the production of the good to be non-originating material, for failure to respond to the request for information subject to the conditions in § 182.75(c)(1), or for failure to respond to the questionnaire.

(2) *Notification of a verification visit.* When CBP sends a notification of a verification visit, the exporter or producer will have 30 days from the date specified in paragraph (e) of this section to consent to or deny the verification visit. CBP may deny the claim for preferential tariff treatment of the good, or consider the material that is used in the production of the good to be non-originating material, for failure to provide consent for a verification visit

within the 30-day response period, unless a postponement is requested in accordance with § 182.74(b).

51. Add § 182.74 to read as follows:

§ 182.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico, CBP must obtain the written consent of the exporter or producer whose premises are to be visited. The exporter or producer must submit this written consent, requested in the notification of a verification visit under § 182.73(b)(3), to CBP through one of the communication means specified in § 182.73(d)(2), within the time period provided in § 182.73(f)(2), unless a postponement is requested in accordance with paragraph (b) of this section.

(b) *Postponement of a verification visit--(1) Request for postponement by an exporter or producer.* Within 15 days of confirmed receipt of the notification of a verification visit, the exporter or producer may, on a single occasion, using one of the communication means specified in § 182.73(d)(2), request the postponement of the verification visit for a period not to exceed 30 days from the proposed date of the visit.

(2) *Notification of a postponement.* CBP will notify the exporter or producer when a postponement request under paragraph (b)(1) of this section is received and will provide the new date of the verification visit. The Mexican or Canadian customs administration where the verification visit will occur may also, within 15 days of confirmed receipt of the notification of a verification visit, postpone the verification visit for a period not to exceed 60 days from the proposed date of the visit or for a longer period as CBP and the Mexican or Canadian customs administration may decide. CBP will notify the exporter or producer if the verification visit is postponed at the request of the Mexican or Canadian customs administration.

(c) *Availability of records--(1) Verification of a good.* The exporter or producer must make the records, which are required to be maintained to demonstrate that the good qualifies for

preferential tariff treatment under the USMCA, available for inspection by a CBP official conducting a verification and provide facilities for that inspection during the verification visit. CBP may deny the claim for preferential tariff treatment of the good for failure to maintain these records or if a CBP official is denied access to these records.

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

(d) *Observers.* The exporter or producer may designate up to two observers to be present during the verification visit, if the exporter or producer chooses, provided that:

(1) The observers do not participate in a manner other than as observers;

(2) The failure of the exporter or producer to designate observers does not result in the postponement of the visit; and

(3) The exporter or producer identifies to CBP any observers designated to be present during the visit.

52. Add § 182.75 to subpart G to read as follows:

§ 182.75 Determinations of origin.

(a) *Contents.* For verifications initiated under this part, CBP will issue a determination of origin that sets forth:

(1) A description of the good that was the subject of the verification;

(2) A statement setting forth the findings of facts made in connection with the verification and upon which the determination is based; and

(3) The legal basis for the determination.

(b) *Parties who will receive a determination of origin.* CBP will issue the determination of origin to the importer, and to 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, within 120 days (or in exceptional cases and upon notification to the parties, within 210 days) after CBP has determined that it has received all the information necessary to issue a determination of origin, including any information necessary from the exporter or producer.

(c) *Negative determinations--*(1) *When a request for information must be sent to the exporter or producer prior to issuing a negative determination.* If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer, and, in response to a request for information, the importer does not provide CBP with sufficient information to verify or substantiate the claim, CBP will send a written request for information or its electronic equivalent to the exporter or producer that completed the certification of origin, subject to the confidentiality provisions in § 182.2, prior to issuing a negative determination.

(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);

(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);

(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;

(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);

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

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

(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; or

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

(3) *Intent to deny.* Prior to issuing a negative determination, CBP will inform 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, of CBP's intent to deny preferential tariff treatment, subject to the confidentiality provisions in § 182.2. This intent to deny will contain the preliminary results of the verification, the effective date of the denial of preferential tariff treatment, and a notice to the importer, exporter, or producer that CBP will provide 30 days to submit additional information, including documents, related to the preferential tariff treatment of the good.

(4) *Issuance of a negative determination of origin.* CBP will issue a negative determination of origin to the parties specified in paragraph (b) of this section if CBP determines,

at least 30 days after receipt by the importer, exporter, or producer of the intent to deny issued pursuant to paragraph (c)(3) of this section, that one or more of the reasons for denial of preferential tariff treatment under paragraph (c)(2) of this section continues to apply. In addition to the contents of the determination set forth in paragraph (a) of this section, 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 of this chapter.

53. Add § 182.76 to subpart G to read as follows:

§ 182.76 Repeated false or unsupported preference claims. Where the verification reveals a pattern of conduct by the importer, exporter, or producer of false or unsupported representations relevant to a claim that a good imported into the United States qualifies for preferential tariff treatment under the USMCA, CBP may withhold preferential tariff treatment under the USMCA for entries of identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with this part and with General Note 11, HTSUS.

54. Revise subpart J consisting of §§ 182.111 through 182.112 to read as follows:

Subpart J—Commercial Samples and Goods Returned after Repair or Alteration

Sec.

182.111 Commercial samples of negligible value

182.112 Goods re-entered after repair or alteration in Canada or Mexico

§ 182.111 Commercial samples of negligible value.

(a) *General.* Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, “commercial samples of negligible value” means commercial samples which have a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn,

perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry.* Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods or services; and

(2) If valued over one U.S. dollar, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples.

§ 182.112 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Canada or Mexico, regardless of whether the repair or alteration could be performed in the United States or has increased the value of the good and regardless of their origin, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, “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.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods that:

(1) In their condition, as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods; or

(2) Are imported under a duty-deferral program that are exported for repair or alteration and are not re-imported under a duty-deferral program.

(c) *Documentation.* The provisions of § 10.8(a), (b), and (c) of this chapter, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty-free.

55. Revise subpart K consisting of §§ 182.121 through 182.124 to read as follows:

Subpart K—Penalties

Sec.

182.121 General.

182.122 Corrected claim or certification of origin by importers

182.123 Corrected certification of origin by U.S. exporters or producers

182.124 Framework for correcting claims or certifications of origin

§ 182.121 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related U.S. laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the U.S. laws and regulations relating to the USMCA.

§ 182.122 Corrected claim or certification of origin by importers.

An importer who makes a corrected claim under § 182.11(c) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification of origin, provided that the corrected claim is promptly and voluntarily made in accordance with § 182.124.

§ 182.123 Corrected certification of origin by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer who completed a certification of origin for a good exported from the United States to Canada or Mexico when the exporter or producer promptly and voluntarily provides

written notification pursuant to §§ 182.21(b) and 182.124 with respect to the making of an incorrect certification of origin.

§ 182.124 Framework for correcting claims or certifications of origin.

(a) *“Promptly and voluntarily” defined.* Except as provided for in paragraph (b) of this section, for purposes of this part, the making of a corrected claim or certification of origin by an importer or the providing of written notification of an incorrect certification of origin by an exporter or producer will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter has occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification of origin by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims--(1) Fraud.*

Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification of origin may not make a voluntary correction of that claim or certification of origin. For purposes of this paragraph, the term “fraud” will have the meaning set forth in paragraph (C)(3) of Appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is

invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this part, each corrected claim or certification of origin must be accompanied by a statement, submitted in writing or via a CBP-authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification of origin relates;

(2) In the case of a corrected claim or certification of origin by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) In the case of a written notification of an incorrect certification of origin by an exporter or producer, identifies each affected export transaction, including each port of exportation and the approximate date of each exportation. A producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(4) Specifies the nature of the incorrect statements or omissions regarding the claim or certification of origin; and

(5) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification of origin, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification of origin within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

PART 190—MODERNIZED DRAWBACK

56. The general and specific authority citations for part 190 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

§§190.2, 190.10, 190.15, 190.23, 190.38, 190.51 issued under 19 U.S.C. 1508;

* * * * *

§ 190.0 [Amended]

57. Amend § 190.0 by adding the phrase “, and provisions relating to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) are contained in subpart E of part 182 of this chapter” after the words “part 181 of this chapter”.

§ 190.0a [Amended]

58. Amend § 190.0a as follows:

a. Add the words “and USMCA” after the term “NAFTA” in the paragraph heading;

b. Add the words “or part 182” after the number “181”.

§ 190.51 [Amended]

59. Amend § 190.51(a)(2)(xv) as follows:

a. Add the words “and USMCA” after the words “For NAFTA”;

b. Remove the words “part 181” and add in their place the words “parts 181 and 182”;

c. Remove the words “to NAFTA countries”.

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the *Federal Register*.

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

Approved:

Timothy E. Skud
Deputy Assistant Secretary of the Treasury.

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