

DEPARTMENT OF COMMERCE**International Trade Administration****19 CFR Part 356**

[Docket No. 211115–0233]

RIN 0625–AB20

Procedures and Rules for Article 10.12 of the United States-Mexico-Canada Agreement

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Commerce (Commerce) is issuing this interim final rule to amend its regulations pertaining to the procedures and rules related to Article 1904 of the North American Free Trade Agreement (NAFTA) with appropriate references to the United States-Mexico-Canada Agreement (USMCA), which went into effect on July 1, 2020. Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. Commerce is amending its regulations to replace references to Article 1904 of NAFTA with references to Article 10.12 of the USMCA; to update outdated cross-references to Commerce's antidumping and countervailing duty regulations; update outdated notice, filing, service, and protective order procedures; and adopt other minor corrections and updates.

DATES:

Effective date: This interim final rule is effective on December 9, 2021. This interim final rule does not apply to any binational panel review under NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before July 1, 2020.

Comment date: To be assured of consideration, written comments on the interim final rule must be received no later than January 10, 2022.

ADDRESSES: Submit comments only through the Federal eRulemaking Portal at <http://www.Regulations.gov>, Docket No. ITA–2021–0006. Due to the COVID–19 situation, Commerce is not able to accept comments submitted by mail or hand-delivery at this time. All comments submitted during the comment period permitted by this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at

<http://www.Regulations.gov>. Commerce will not accept response comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance Communications office at (202) 482–0063 or ECCcommunications@trade.gov.

FOR FURTHER INFORMATION CONTACT: Jessica Link at (202) 482–1411.

SUPPLEMENTARY INFORMATION:**Background**

On November 30, 2018, the “Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada” (the Protocol) was signed to replace the North American Free Trade Agreement (NAFTA). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA)¹ is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the “Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada” (the Amended Protocol), which the Office of the United States Trade Representative (USTR) signed on December 10, 2019. The USMCA entered into force on July 1, 2020.²

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.

² 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. 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 Implementation Act), Public Law 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), on January 29, 2020. 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. On December 27, 2020, subsequent to the USMCA's entry into force date of July 1, 2020, the Consolidated Appropriations Act, 2021 (Appropriations Act), Public Law 116–260, was enacted with Title VI of the Act containing technical corrections to the USMCA Act. All of the

Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. The procedures and rules for binational panel review of antidumping and countervailing duty administrative determinations under Article 10.12 of the USMCA are virtually unchanged from Article 1904 of NAFTA.

Sections 421–433 and 504 of the USMCA Implementation Act provide technical and conforming amendments to the Tariff Act of 1930, as amended (the Act) related to Chapter 10 of the USMCA on antidumping and countervailing duty matters. The Statement of Administrative Action accompanying the USMCA Implementation Act provides that, “[i]n substance, U.S. laws and regulations are already in conformity with the obligations assumed under [Chapter 10 of the USMCA,]” and, therefore, “no changes in administrative regulations, practices, or procedures are required to implement the . . . antidumping and countervailing duty related provisions of Chapter 10.”³

Pursuant to Article 10.12.14 of the USMCA, the United States, Mexico, and Canada trilaterally negotiated and agreed to rules of procedure for binational panel review modifying and updating the previous rules of procedure for Article 1904 of NAFTA. Effective May 18, 2021, Decision No. 2 of the USMCA Free Trade Commission adopted the rules of procedure applicable to all binational panel reviews under the USMCA. The rules of procedure are contained in Annex II to that decision and are cited as the Article 10.12 Binational Panel Rules.⁴

Commerce's regulations, 19 CFR part 356 (procedures and rules for the implementation of NAFTA Article 1904) were first promulgated in 1994 and have not undergone any updates since that time. Although not required by the USMCA Implementation Act, Commerce is amending its regulations

changes contained within Title VI of the Appropriations Act are retroactively effective on July 1, 2020.

³ Statement of Administrative Action accompanying the USMCA Implementation Act at 26.

⁴ 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-2>. The Secretariat of the USMCA, comprised of a Canadian section, a United States section and a Mexican section, is responsible for the administration of the binational panel review process.

pertaining to the procedures and rules governing the binational panel dispute settlement mechanism to review antidumping duty and countervailing duty determinations issued by the United States as set forth in the USMCA. Because the dispute settlement mechanism in USMCA Article 10.12 is substantively identical to that in NAFTA Article 1904, Commerce is adopting non-substantive amendments to ensure that its rules appropriately reference the USMCA. Commerce is also adopting additional non-substantive amendments, including updating outdated cross-references to Commerce's antidumping and countervailing duty regulations (19 CFR part 351), updating outdated notice, filing, service, and protective order procedures, and adopting other minor corrections and updates. These changes are explained in the preamble of this interim final rule and reflected in the regulatory text below.

Explanation of Regulatory Updates

1. Updates To Reflect the Enactment of the USMCA

Commerce's regulations in 19 CFR part 356 implement procedures for disputes pursuant to Article 1904 of NAFTA. Because NAFTA was replaced pursuant to the enactment of the USMCA, Commerce's regulations in this section require updates to reflect the name of the new agreement and the relevant chapter contained in the new Agreement. Therefore, Commerce is adopting several changes throughout part 356 to replace references to NAFTA with references to the USMCA. Commerce is also adopting several changes throughout part 356 to replace references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with reference to section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020, which authorizes Commerce to promulgate such regulations as necessary or appropriate to implement its responsibilities under chapter 10 of the USMCA.⁵

These changes are reflected in the title of part 356 and §§ 356.1, 356.2(d), 356.2(f), and 356.2(kk) (replacing references to North American Free Trade Agreement or NAFTA with United States-Mexico-Canada

Agreement or USMCA); §§ 356.1, 356.2(f), 356.2(o), 356.2(p), 356.2(cc)(3), 356.10(b)(1)(ii)(B), 356.11(a)(1)(i), and 356.11(b)(2)(ii) (replacing references to Article 1904 of NAFTA with Article 10.12 of USMCA); §§ 356.2, 356.3, 356.4, 356.10(b)(4)(i), 356.11(a)(5)–(6) (replacing references to Article 1904 Panel Rules with Article 10.12 Binational Panel Rules); § 356.1 (replacing references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with section 412(g) of the United States-Mexico-Canada Implementation Act of 2020); § 356.2 (replacing the signing date of NAFTA, December 17, 1992 with the signing date of the amended USMCA, November 30, 2018); §§ 356.2(h), 356.2(p), and 356.2(w) (replacing references to Chapter Nineteen with Chapter Ten); § 356.2(h) (replacing references to Annex 1901.2 with Annex 10–B.1); in § 356.2(p) (replacing references to Annex 1904.13 with Annex 10–B.3); § 356.2(q) (replacing references to Article 1911 with Article 10.8); § 356.2(ff) (replacing references to Article 2002 with Article 30.6); and § 356.2(r) (replacing references to section 516A(f)(9) of the Act with section 516A(f)(10) of the Act).

Commerce is also removing several references to the United States-Canada Free Trade Agreement, which was superseded by NAFTA. Commerce's regulations contained provisions governing dispute resolution pursuant to the United States-Canada Free Trade Agreement. Because there are no active disputes pursuant to that agreement, Commerce is removing reference to it throughout its regulations. These changes are reflected in §§ 356.2(d), 356.10(c)(1)(ii), and 356.11(c)(1)(ii).

2. Updates To Address Obsolete Regulatory Cross-References

Commerce is also updating outdated regulatory cross-references in 19 CFR part 356 to 19 CFR parts 353 (addressing antidumping duty rules and procedures) and 355 (addressing countervailing duty rules and procedures) which became obsolete when Commerce consolidated parts 353 and 355 into a single part 351 in 1997.⁶ Despite the 1997 consolidation, references to obsolete parts 353 and 355 remain in part 356. Therefore, Commerce is removing

obsolete cross-references to parts 353 and 355 and replacing them with updated references to part 351 to reflect the 1997 consolidation of the AD/CVD regulations and any relevant subsequent regulatory changes Commerce made to part 351 thereafter.⁷

These changes are reflected in § 356.2(u) (replacing cross-references to 19 CFR 353.31(e)(2)(i) through (v) or 355.31(e)(2)(i) through (v) with 19 CFR 351.303(d)(2), which outline Commerce's current requirements for document submissions with respect to specifications and first page "letter of transmittal" markings); §§ 356.7(b) and 356.8(d) (replacing cross-references to 19 CFR 353.31(d), (e)(2) and 19 CFR 355.31(d), (e)(2) with references to 19 CFR 351.303(b) and 19 CFR 351.303(d)(2), which outline Commerce's current format and filing requirements for document submissions); § 356.7(c) and 356.8(d) (replacing cross-references to 19 CFR 353.31(g) and 19 CFR 355.31(g) with reference to current 19 CFR 351.303(f) which outlines Commerce's current service requirements).

3. Updates To Address Outdated Notice, Filing, Service, and Protective Order Procedures

Commerce is also updating its regulations relating to certain outdated notice procedures. Specifically, current §§ 356.6 and 356.7 provide that Commerce will notify governments of Free Trade Agreement (FTA) Countries of scope determinations and contemplate that such determinations not be published in the **Federal Register**.⁸ Under current § 356.6, when Commerce makes a scope determination, notice of such scope determination shall be deemed received by the Government of an FTA country when a certified copy of the determination is delivered to the chancery of the Embassy of the FTA.

Under Commerce's current procedures, scope rulings under 19 CFR 351.225 are a type of "class or kind determination," a term that also encompasses circumvention determinations under section 781 of the Act. In some instances, a class or kind determination may be published in the **Federal Register**. Otherwise, interested parties will be notified of a

⁵ See United States-Mexico-Canada Agreement Implementation Act of 2020, Public Law 116–113, 134 Stat. 74 (Jan. 29, 2020); 19 U.S.C. 4582 (2020). See also North American Free Trade Agreement Act of 1993, Public Law 103–182, 107 Stat. 2135 (Dec. 8, 1993) (section 402(g) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3432(g)).

⁶ See 62 FR 27296, 27297 (May 19, 1997) (final rulemaking to eliminate Parts 353 and 355 and promulgate a single Part 351, 19 CFR 351, in their place); see also 61 FR 7308, 7310 (Feb. 27, 1996) ("[I]n response to the President's Regulatory Reform Initiative, to reduce the amount of duplicative material in the regulations, the Department has consolidated the antidumping and countervailing duty regulations into a new Part 351, and is removing Parts 353 and 355.")

⁷ See, e.g., 62 FR 27296 (May 19, 1997); 73 FR 3627 (Jan. 22, 2008); 76 FR 39275 (July 6, 2011); 80 FR 36473 (June 25, 2015); and 85 FR 17007 (March 26, 2020).

⁸ This language originated in the 1988 interim final rule for the United States-Canada Free Trade Agreement. See *Panel Review Under Article 1904 of the U.S.-Canada Free-Trade Agreement*, 53 FR 53232, 53233 (Dec. 30, 1988 (interim final rule)).

determination through other means, including through mailing or electronic means. Section 516A(g)(10) of the Act, as amended by the USMCA Implementation Act, provides that Commerce, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination. However, the statute is silent as to the method of notice to the government of a FTA country, and, therefore, it is left to the discretion of Commerce.⁹

Accordingly, Commerce is revising § 356.6 to state that notice shall be deemed received either on the date on which the class or kind determination is published in the **Federal Register**, or, if the determination is not published, on the date on which Commerce conveys a copy of the determination by electronic notification to the government. Further, in instances in which Commerce does not publish the determination, these changes will require that Commerce: (1) Confirm the appropriate Embassy electronic mail address, and (2) directly convey to the Embassy an electronic copy of the determination during the Embassy's normal business hours. Commerce is also adopting changes to reflect that "class or kind determination" is a more accurate term than "scope determination" for these types of determinations. Similar edits are reflected in § 356.7. In addition, for ease of reference the definition for scope determination in § 356.2(ee) has been expanded to include reference to class or kind of merchandise determination.

Commerce is also amending §§ 356.10 and 356.11 regarding the procedures for access to proprietary and privileged information during a USMCA binational panel dispute. Current § 356.10 requires a party seeking access to proprietary information to do so by submitting an application for a protective order. Such applications are to be filed with the U.S. section of the USMCA Secretariat, which in turn provides the applications

to Commerce. Upon approving the application, Commerce will then issue the protective order to the Secretariat, which in turn will issue the protective order to the original applicant along with other participating parties to the dispute. The procedures in § 356.10(b)(3) have been updated to remove the requirement for manual filing.

Additionally, current § 356.10(b)(4)(ii) provides the method of service by which a protective order may be served. Because this provision does not currently account for service by electronic means, which is now permitted by the U.S. section of the Secretariat under the Article 10.12 Binational Panel Rules, Commerce is adding language to § 356.10(b)(4)(ii)(B) to allow for electronic means as a method of service for protective orders. Further, Commerce is adding an additional provision (§ 356.10(b)(4)(ii)(D)) to reflect that the U.S. section of the Secretariat allows for the filing of documents using an electronic filing platform to satisfy service requirements under the Article 10.12 Binational Panel Rules. Commerce is also adding corresponding language to § 356.10(b)(4)(iii) regarding the date of service if a document is served by electronic means or filed using the electronic filing platform.

Commerce is also revising §§ 356.7(b); 356.8(d)(1); 356.10(b)(3) through (5), 356.10(c)(1)(i), 356.10(c)(2)(i), 356.10(c)(2)(v), 356.10(c)(3), 356.10(c)(4)(i), 356.10(d)(2), 356.11(a)(2) and (3), 356.11(a)(5)(i)–(ii), 356.11(c)(1)(i), 356.11(c)(2) and (3), and 356.11(d)(2) to remove language requiring originals and multiple copies, as such a requirement has been made obsolete. Moreover, Commerce is also revising §§ 356.10(b)(1)(ii)(C), 356.11(b)(2)(iii), 356.12(a)(5), 356.14(d)(2), 356.14(d)(4), and 356.18(c)(4) to remove language requiring parties to return documents released under protective order and to log the use of proprietary documents, as such requirements have become obsolete, and to instead require parties to destroy and certify to the destruction of documents released under protective order.

4. Other Minor Corrections and Updates

Commerce is also adopting minor corrections and updates to part 356 in §§ 356.10(b)(1)(i) and 356.11(b)(1) (updating the address and the room number of the Central Records Unit); §§ 356.7(b) and 356.8(d)(1) (updating the address and the room number of the APO/Dockets Unit); §§ 356.2(ee) and 356.27(d) (correcting punctuation);

§ 356.2(kk) (correcting the address of the Commerce Department); § 356.2(bb)(2) (updating the name of Mexico's Secretaría de Comercio y Fomento Industrial to the Secretariat of Economy); and § 356.11(c)(3) (adding a missing word in the title of the paragraph). Lastly, Commerce is updating the definition of the term "director" as specified in § 356.2(n) to correspond with the current definition in 19 CFR part 354, revised by Commerce in 1998.¹⁰

Classifications

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. The APA (5 U.S.C. 553(b)) provides a statutory exemption to notice-and-comment rulemaking for rules of agency organization, procedure, or practice and when the agency finds for good cause that such procedures are impracticable, unnecessary, or contrary to the public interest. Commerce's amendments to the regulation, 19 CFR 356, fall within this exemption.

Specifically, providing notice of and an opportunity for comment on the amended regulation in advance of its effective date is unnecessary pursuant to the good cause exemption (5 U.S.C. 553(b)(B)). As described above, the first set of amendments reflect revisions already made to U.S. law following the enactment of the USMCA; are already known to parties; or are otherwise necessary to replace outdated references to NAFTA with the USMCA.¹¹ The second set of amendments address obsolete regulatory cross-references to other parts of Commerce's regulations; are non-substantive and technical in nature; and reflect procedures that are already known to parties.¹² The third set of amendments streamline or remove outdated paper notice, filing, service,

⁹ Similarly, the relevant language in USMCA Article 10.12.4 does not specify the method by which the importing Party must notify the other involved Party of determinations not published in the official journal: "In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice." Nor do the Article 10.12 Binational Panel Rules, which state at Article 39(2)(c) that a Request for Panel Review must contain "the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication." There are no specific requirements on the method of notification.

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 85 FR 24391, 24400, 24403 (May 4, 1998) (final rule) (revising the definition of the term "director" in 19 CFR 354.2 to include "Senior APO Specialist" and to conform with changes in office director positions following an internal reorganization).

¹¹ See changes described above under "Updates to Reflect the Enactment of the USMCA."

¹² See changes described above under "Updates to Address Obsolete Regulatory Cross-references."

and protective order requirements and procedures that have been replaced by electronic requirements and procedures.¹³ Certain of these procedures have already been adopted by the United States, Mexico, and Canada under the Article 10.12 Binational Panel Rules; are already known to parties; or are otherwise necessary to remove outdated and burdensome requirements.¹⁴ Further, the amendments allowing for electronic notification of class or kind of merchandise determinations, in lieu of in-person notification, are necessary and appropriate in light of COVID-19.¹⁵ Lastly, the fourth set of amendments reflect updated office locations and internal organization and correct nomenclature or punctuation.¹⁶ In light of the above, prior notice and opportunity for comment is unnecessary. However, Commerce would like to know the public's view on these revisions and is therefore soliciting comments on the Interim Final Rule and will consider all comments received before issuing a final rule.

In addition, the APA (5 U.S.C. 553(d)(3)) provides that a 30-day delayed effective date may be waived if the agency finds good cause to waive such a requirement. For the same reasons as explained above, and because this rule does not impose affirmative requirements on any entity, a delayed effective date is unnecessary.

Executive Order 12866

OMB has not found this rule to be a significant rulemaking under Executive Order 12866.

Executive Order 13132

This proposed rule does not contain policies with federalism implications that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This rule does not contain a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 (PRA).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended, requires

an agency to prepare and make available to the public a regulatory flexibility analysis that describes whether a rule will have a significant effect on a substantial number of small entities when the agency is required to publish a general notice of proposed rulemaking. Because a notice of proposed rulemaking is not necessary for this rule, Commerce is not required to prepare a regulatory flexibility analysis for this rule, and none has been prepared.

List of Subjects in 19 CFR Part 356

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Countervailing duties, Imports.

Dated: November 29, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce is amending 19 CFR part 356 as follows:

PART 356—PROCEDURES AND RULES FOR ARTICLE 10.12 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

■ 1. The authority citation for 19 CFR part 356 continues to read as follows:

Authority: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

■ 2. Revise the heading to part 356 to read as set forth above.

■ 3. Revise § 356.1 to read as follows:

§ 356.1 Scope.

This part sets forth procedures and rules for Article 10.12 of the United States-Mexico-Canada Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Mexico-Canada Agreement Implementation Act of 2020 (19 U.S.C. 1516a and 1677f(f)).

This part is authorized by section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020.

■ 4. In § 356.2, revise paragraphs (d), (f), (h), (n), (o), (p), (q), (r), (u), (w), (bb)(2)(ii), (cc)(3), (ee), (ff), (hh), and (kk) to read as follows:

§ 356.2 Definitions.

* * * * *

(d) *Agreement* means the United States-Mexico-Canada Agreement (USMCA) between Canada, the United Mexican States, and the United States, signed on November 30, 2018, as amended;

* * * * *

(f) *Article 10.12 Binational Panel Rules* means the USMCA Article 10.12 Binational Panel Rules, established in accordance with Article 10.12.14 of the USMCA, and any subsequent amendments;

* * * * *

(h) *Binational panel* means a binational panel established pursuant to Annex 10-B.1 to Chapter Ten of the Agreement for the purposes of reviewing a final determination;

* * * * *

(n) *Director* means the Senior APO Specialist (as defined by 19 CFR 354.2) or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

(o) *Disclosure undertaking* means:

(1) In the case of Canada, the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 10.12 of the Agreement, as prescribed by subsection 77.21(2) of the Special Import Measures Act, as amended;

(2) In the case of Mexico, the Mexican mechanism for protecting proprietary or privileged information during the proceedings pursuant to Article 10.12 of the Agreement, as prescribed by the Ley de Comercio Exterior and its regulations;

(p) *Extraordinary challenge committee* means the committee established pursuant to Annex 10-B.3 to Chapter Ten of the Agreement to review decisions of a panel or conduct of a panelist;

(q) *Final determination* means “final determination” as defined by Article 10.8 of the Agreement;

(r) *Free trade area country* or *FTA country* means “free trade area country” as defined by section 516A(f)(9) of the Act (19 U.S.C. 1516a(f)(9));

* * * * *

(u) *Letter of transmittal* means a document marked according to the requirements of 19 CFR 351.303(d)(2);

* * * * *

(w) *Panel review* means review of a final determination pursuant to Chapter Ten of the Agreement;

* * * * *

(bb) * * *
(2) * * *

(ii) Internal communications between officials of Secretariat of Economy in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

* * * * *

¹³ See changes described above under “Updates to Address Outdated Notice, Filing, Service, and Protective Order Procedures.”

¹⁴ See discussion of changes to §§ 356.2(ee); 356.7; 356.8; 356.10; 356.11; 356.12; 356.14; and 356.18.

¹⁵ See discussion of changes to § 356.6 and corresponding revisions to § 356.7.

¹⁶ See changes described under “Other Minor Corrections and Updates.”

(cc) * * *

(3) With respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the Act (19 U.S.C. 1677f(f)) and information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 10.12.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

(ee) *Scope determination or class or kind of merchandise determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi)), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise.

(ff) *Secretariat* means the Secretariat established pursuant to Article 30.6 of the Agreement and includes the Secretariat sections located in Canada, Mexico, and the United States;

(hh) *Service address* means the address of the counsel of record for a person, including an electronic mail address submitted with that address, or where a person is not represented by counsel, the address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, including an electronic mail address submitted with that address, or where a Change of Service Address has been filed by a person, the new service address set out as the service address in that form, including an electronic mail address submitted with that address;

(kk) *United States section of the Secretariat* means, for the purposes of filing, United States Secretary, USMCA Secretariat, room 2061, U.S. Department of Commerce 14th and Constitution Avenue NW, Washington, DC 20230.

■ 5. In § 356.3, revise the introductory text to read as follows:

§ 356.3 Notice of intent to commence judicial review.

A party to a proceeding who intends to commence judicial review of a final determination made in the United States shall file a Notice of Intent to Commence Judicial Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 10.12 Binational Panel Rules, within 20 days after:

* * * * *

■ 6. In § 356.4, revise the introductory text to read as follows:

§ 356.4 Request for panel review.

A party to a proceeding who seeks panel review of a final determination shall file a Request for Panel Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 10.12 Binational Panel Rules, within 30 days after:

* * * * *

■ 7. Revise § 356.6 to read as follows:

§ 356.6 Receipt of notice of a class or kind of merchandise determination by the Government of a FTA country.

Where the Department has made a class or kind of merchandise determination, notice of such determination shall be deemed received by the Government of a FTA country:

(a) On the date of publication in the official publication of the determination; or

(b) If the determination was not published in the official publication, on the date on which the Department conveys a copy of the determination to the electronic mail address provided by the Embassy of the FTA country during its normal business hours.

■ 8. In § 356.7, revise paragraphs (a), (b), and (c) to read as follows:

§ 356.7 Request to determine when the Government of a FTA country received notice of a class or kind of merchandise determination.

(a) Pursuant to section 516A(g)(1) of the Act (19 U.S.C 1516a(g)(10)), any party to the proceeding may request in writing from the Department the date on which the Government of a FTA country received notice of a class or kind of merchandise determination made by the Department.

(b) A request shall be made by filing a request in accordance with the requirements set forth in 19 CFR 351.303(b) and 351.303(d)(2) with the Secretary of Commerce, Attention: Enforcement and Compliance, APO/ Dockets Unit, Room 18022, U.S.

Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. A letter of transmittal must be the first page of the request.

(c) The requesting party shall serve a copy of the Request to Determine When the Government of [insert name of applicable FTA country] Received Notice of a Class or Kind of Merchandise Determination on any interested party on the Department's service list in accordance with the service requirements listed in 19 CFR 351.303(f).

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■ 9. In § 356.8, revise paragraphs (d)(1) and (2) to read as follows:

§ 356.8 Continued suspension of liquidation.

* * * * *

(d) * * *

(1) A request for Continued Suspension of Liquidation must be filed with the Assistant Secretary for Enforcement and Compliance, Attention: APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, in accordance with the requirements set forth in 19 CFR 351.303(b) and (d)(2). A letter of transmittal must be the first page of the request and be marked: Panel Review—Request for Continued Suspension of Liquidation. The request may be made no earlier than the date on which the first request for binational panel review is filed.

(2) The requesting party shall serve a copy of the Request for Continued Suspension of Liquidation on the United States Secretary and all parties to the proceeding in accordance with the requirements of 19 CFR 351.303(f).

* * * * *

■ 10. In § 356.10:

■ a. Revise paragraphs (b)(1)(i), (b)(1)(ii)(B) and (C), (b)(3), (b)(4)(i), and (b)(4)(ii)(B) and (C);

■ b. Add paragraph (b)(4)(ii)(D);

■ c. Revise paragraphs (b)(4)(iii), (b)(5), and (c)(1)(i);

■ d. Remove and reserve paragraph (c)(1)(ii); and

■ e. Revise paragraphs (c)(2)(i) and (v), (c)(3), (c)(4)(i), and (d)(2).

The revisions and addition read as follows:

§ 356.10 Procedures for obtaining access to proprietary information.

* * * * *

(b) * * *

(1) * * *

(i) The Department has adopted application forms for disclosure of

proprietary information which are available from the United States section of the Secretariat or the Central Records Unit, Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. The application forms may be amended from time to time.

(ii) * * *

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 10.12 of the Agreement;

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, destroy and certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order); and

* * * * *

(3) *Filing of applications.* A person described in § 356.9(a), (b), (d), (e), (f), or (g) shall file the completed application with the United States section of the Secretariat which, in turn, shall provide the application to the Department. A letter of transmittal and proposed protective order must be included with the application.

(4) * * *

(i) *Persons described in §§ 356.9(b) (counsel, etc.).* A person described in § 356.9(b) who files an application before the expiration of the time period fixed under the Article 10.12 Binational Panel Rules for filing a Notice of Appearance in the panel review shall serve the application on each person listed on the service list in accordance with paragraphs (b)(4)(ii) and (iii) of this section. In any other case, such person shall serve the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii).

(ii) * * *

(B) Sending a copy of the document to the service address of the participant by electronic means or by expedited delivery courier or expedited mail service;

(C) Personal service on the participant; or

(D) Filing the document using the United States section of the Secretariat's electronic filing platform.

(iii) *Proof and date of service.* A proof of service shall appear on, or be affixed to, the document. Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service

or certificate of service shall be the day on which the document is consigned to the expedited delivery courier service or expedited mail service. If a document is served by electronic means, the date of service shall be the day on which the document is sent by the sender. If a document is filed using the United States section of the Secretariat's electronic filing platform, the date of service shall be the date of filing.

(5) *Release to employees of panelists, committee members, and counsel or professionals.* A person described in § 356.9(c), including a paralegal, law clerk, or secretary, may be permitted access to proprietary information disclosed under protective order by the counsel, professional, panelist, or extraordinary challenge committee member who retains or employs such person, if such person has agreed to the terms of the protective order issued to the counsel, professional, panelist, or extraordinary challenge committee member, by signing and dating a completed application for protective order of the representative counsel, professional, panelist or extraordinary challenge committee member in the location indicated in that application.

* * * * *

(c) * * *

(1) * * *

(i) Upon receipt by the Department of an application from a person described in § 356.9(a), the Department will issue a protective order authorizing disclosure of proprietary information included in the administrative record of the final determination that is the subject of the panel review at issue. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

* * * * *

(2) * * *

(i) *Opportunity to object to disclosure.* The Department will not rule on an application filed by a person described in § 356.9(b) until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously. Unless the Department has indicated otherwise, any person may file an objection to the application within seven days of filing of the application. Any such objection shall state the specific reasons in the view of such person why the application should not be granted. The objection shall be served on the applicant and on all persons who were served with the

application. Service shall be made in accordance with paragraphs (b)(4)(ii) and (iii) of this section. Any reply to an objection will be considered if it is filed before the Department renders a decision.

* * * * *

(v) *Issuance of protective orders.* If the Department issues a protective order to a person described in § 356.9(b), that person shall immediately file the protective order with the United States section of the Secretariat and shall serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(3) *Persons described in § 356.9(d) or (g) (Secretaries, etc., or court reporters, etc.).* Upon receipt by the Department of an application from a person described in § 356.9(d) or (g), the Department will issue a protective order authorizing disclosure of proprietary information to the applicant. The Department shall transmit the protective order to the United States section of the Secretariat.

(4) * * *

(i) Upon receipt by the Department of an application from a person described in § 356.9(e) or (f), the Department will issue a protective order authorizing disclosure of proprietary information included in the record of the panel review at issue. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(d) * * *

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a protective order pursuant to this paragraph (d), the Department shall transmit the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the document to the person to whom the protective order was issued and serve the document on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

■ 11. In § 356.11:

■ a. Revise paragraphs (a)(1)(i), (a)(2) and (3), (a)(5) and (6), (b)(1), (b)(2)(ii) and (iii), and (c)(1)(i);

■ b. Remove and reserve paragraph (c)(1)(ii); and

■ c. Revise paragraphs (c)(2) and (3) and (d)(2).

The revisions read as follows:

§ 356.11 Procedures for obtaining access to privileged information.

(a) * * *

(1) * * *

(i) If a panel decides that *in camera* examination of a document containing privileged information in an administrative record is necessary in order for the panel to determine whether the document, or portions thereof, should be disclosed under a Protective Order for Privileged Information, each panelist who is to conduct the *in camera* review, pursuant to the rules of procedure adopted by the United States and the free trade area countries to implement Article 10.12 of the Agreement, shall submit an application for disclosure of the privileged information under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department; and

* * * * *

(2) *Designated officials of the United States Government.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States should request an extraordinary challenge committee, each official of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) whom the United States Trade Representative informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the application to the Department.

(3) *Designated officials of the government of a FTA country.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the Government of an involved FTA country should request an extraordinary challenge committee, each official of the Government of the involved FTA country whom an authorized agency of the involved FTA country informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information with the United States section of the Secretariat which,

in turn, shall submit the application to the Department.

* * * * *

(5) *Counsel or a professional under the direction or control of counsel.* If the panel decides, in accordance with the Article 10.12 Binational Panel Rules, that disclosure of a document containing privileged information is appropriate, a counsel or a professional under the direction or control of counsel identified in such a decision as entitled to release of information under a Protective Order for Privileged Information shall submit an application for a Protective Order for Privileged Information. Any such person shall:

(i) File the application with the United States section of the Secretariat which, in turn, shall submit the application to the Department; and

(ii) As soon as the deadline fixed under the Article 10.12 Binational Panel Rules for filing a Notice of Appearance in the panel review has passed, shall serve the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(6) *Other designated persons.* If the panel decides, in accordance with the Article 10.12 Binational Panel Rules, that disclosure of a document containing privileged information is appropriate, any person identified in such a decision as entitled to release of information under a Protective Order for Privileged Information, *e.g.*, a Secretary, Secretariat staff, court reporters, interpreters and translators, or a member of the staff of a panelist or extraordinary challenge committee member, shall submit an application for release under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(b) * * *

(1) The Department has adopted application forms for disclosure of privileged information which are available from the United States section of the Secretariat and the Central Records Unit, Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. These forms may be amended from time to time.

(2) * * *

(ii) Use such information solely for purposes of the proceedings under Article 10.12 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, destroy and certify to the Department the destruction of all documents released

under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

* * * * *

(c) * * *

(1) * * *

(i) Upon receipt of an application for protective order under this section from a panelist, designated government official or member of an extraordinary challenge committee, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4)(ii) and (iii).

* * * * *

(2) *Counsel or a professional under the direction or control of counsel.* Upon receipt of an application for protective order under this section from a counsel or a professional under the direction or control of counsel, the Department shall issue a Protective Order for Privileged Information. If the Department issues a protective order to such person, that person shall immediately file the protective order with the United States section of the Secretariat and shall serve the order on each participant, other than the investigating authority, in accordance with § 356.10(b)(4)(ii) and (iii).

(3) *Other designated persons described in paragraph (a)(6) of this section.* Upon receipt of an application for protective order under this section from a designated person described in paragraph (a)(6) of this section, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the protective order to the United States section of the Secretariat.

(d) * * *

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a Protective Order for Privileged Information pursuant to this paragraph (d), the Department shall transmit the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the document to the person to whom the protective order was issued and serve the document on each participant, other than the investigating authority, in accordance with § 356.10(b)(4)(ii) and (iii).

■ 12. In § 356.12, revise paragraph (a)(5) to read as follows:

§ 356.12 Sanctions for violation of a protective order or disclosure undertaking.

(a) * * *

(5) Required to destroy and certify to the Department the destruction of all material previously provided by the investigating authority, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or a disclosure undertaking.

* * * * *

■ 13. In § 356.14, revise paragraphs (d)(2) and (4) to read as follows:

§ 356.14 Report of violation and investigation.

* * * * *

(d) * * *

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

* * * * *

(4) Failure to destroy and certify to the Department the destruction of all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the protective order.

* * * * *

■ 14. In § 356.18, revise paragraph (c)(4) to read as follows:

§ 356.18 Interim sanctions.

* * * * *

(c) * * *

(4) Requiring the person to destroy and certify to the Department the destruction of all material previously provided by the Department or the investigating authority of the involved FTA country, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

* * * * *

■ 15. In § 356.27, revise the paragraph (d) subject heading to read as follows:

§ 356.27 Final decision.

* * * * *

(d) *Contents of final decision.* * * *

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[FR Doc. 2021-26551 Filed 12-8-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1141

[Docket No. FDA-2019-N-3065]

RIN 0910-AI39

Tobacco Products; Required Warnings for Cigarette Packages and Advertisements; Delayed Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: As required by an order issued by the U.S. District Court for the Eastern District of Texas, this action delays the effective date of the final rule (“Tobacco Products; Required Warnings for Cigarette Packages and Advertisements”), which published on March 18, 2020. The new effective date is January 9, 2023.

DATES: The effective date of the rule amending 21 CFR part 1141 published at 85 FR 15638, March 18, 2020, and delayed at 85 FR 32293, May 29, 2020; 86 FR 3793, January 15, 2021; 86 FR 36509, July 12, 2021; and 86 FR 50854, September 13, 2021, is further delayed until January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993-0002, 1-877-287-1371, email: CTPRegulations@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 18, 2020, the Food and Drug Administration (FDA or Agency) issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111-31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 (Pub. L. 89-92)

to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.¹ On May 8, 2020, the court granted a joint motion to govern proceedings in that case and postpone the effective date of the final rule by 120 days.² On December 2, 2020, the court granted a new motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.³ On March 2, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.⁴ On May 21, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.⁵ On August 18, 2021, the court issued an order to postpone the effective date of the final rule by an additional 90 days.⁶ On November 12, 2021, the court issued another order to postpone the effective date of the final rule by an additional 90 days.⁷ The court ordered that the new effective date of the final rule is January 9, 2023. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, the Agency’s implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exception in 5 U.S.C.

¹ *R.J. Reynolds Tobacco Co. et al. v. United States Food and Drug Administration et al.*, No. 6:20-cv-00176 (E.D. Tex. filed April 3, 2020).

² *R.J. Reynolds Tobacco Co.*, No. 6:20-cv-00176 (E.D. Tex. May 8, 2020) (order granting joint motion and establishing schedule), Doc. No. 33.

³ *R.J. Reynolds Tobacco Co.*, No. 6:20-cv-00176 (E.D. Tex. December 2, 2020) (order granting Plaintiffs’ motion and postponing effective date), Doc. No. 80.

⁴ *R.J. Reynolds Tobacco Co.*, No. 6:20-cv-00176 (E.D. Tex. March 2, 2021) (order granting Plaintiffs’ motion and postponing effective date), Doc. No. 89.

⁵ *R.J. Reynolds Tobacco Co.*, No. 6:20-cv-00176 (E.D. Tex. May 21, 2021) (order granting Plaintiffs’ motion and postponing effective date), Doc. No. 91.

⁶ *R.J. Reynolds Tobacco Co.*, No. 6:20-cv-00176 (E.D. Tex. August 18, 2021) (order postponing effective date), Doc. No. 92.

⁷ *R.J. Reynolds Tobacco Co.*, No. 6:20-cv-00176 (E.D. Tex. November 12, 2021) (order postponing effective date), Doc. No. 93.