

**Pt. 181, App. 19 CFR Ch. I (4-1-08 Edition)**

**SECTION 11. MOTOR VEHICLE AVERAGING**

**NC AND VNM FOR MOTOR VEHICLES MAY BE AVERAGED OVER PRODUCER'S FISCAL**

**YEAR**

- (1) For purposes of calculating the regional value content of light-duty vehicles or heavy-duty vehicles, the producer of those motor vehicles may choose that
- (a) the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year with respect to the motor vehicles that are in any one of the categories set out in subsection (5) that is chosen by the producer; and
  - (b) the sums referred to in paragraph (a) be used in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

**INFORMATION REQUIRED WHEN PRODUCER CHOOSES TO AVERAGE FOR MOTOR VEHICLES**

- (2) A choice made under subsection (1) shall

- (a) state the category chosen by the producer, and
  - (i) where the category referred to in subsection (5)(a) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,
  - (ii) where the category referred to in subsection (5)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and
  - (iii) where the category referred to in subsection (5)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the locations of the plants at which the motor vehicles are produced;
- (b) state the basis of the calculation described in subsection (9);
- (c) state the producer's name and address;
- (d) state the period with respect to which the choice is made, including the starting and ending dates;
- (e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);
- (f) be dated and signed by an authorized officer of the producer; and
- (g) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

**AVERAGING PERIOD**

- (3) Where the fiscal year of a producer begins after the date of the entry into force of the Agreement but before one year after that date, the producer may choose that the calculation of regional value content referred to in subsection (1) or (6) be made under that subsection over the period beginning on the date of the entry into force of the Agreement and ending at the end of that fiscal year, in which case the choice shall be filed with the customs administration of each NAFTA country to which vehicles are to be exported during the period covered by the choice not later than 10 days after the entry into force of the Agreement, or such longer period as that customs administration may accept.

(4) Where the fiscal year of a producer begins on the date of the entry into force of the Agreement, the producer may make the choice referred to in subsection (1) not later than 10 days after the entry into force of the Agreement, or such longer period as the customs administration referred to in subsection (2)(g) may accept.

#### CATEGORIES OF MOTOR VEHICLES FOR AVERAGING

(5) The categories referred to in subsection (1) are the following:

465

#### **Bureau of Customs and Border Protection, DHS; Treasury Pt. 181, App.**

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

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(c) the same model line of motor vehicles produced in the territory of a NAFTA country.

(6) Where applicable, a producer may choose that the calculation of the regional value content of motor vehicles referred to in Schedule VI be made in accordance with that schedule.

#### TIMELY FILING OF CHOICE TO AVERAGE

(7) Subject to section 5(4) of Schedule VI, the choice referred to in subsection (6) shall be filed with the customs administration of the NAFTA country to which vehicles referred to in that schedule are to be exported, at least 10 days before the first day of the producer's fiscal year with respect to which that choice is to apply or such shorter period as the customs administration may accept.

#### CHOICE TO AVERAGE CANNOT BE RESCINDED

(8) A choice filed for the period referred to in subsection (1) or (3) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

#### AVERAGED NET COST AND VNM INCLUDED IN CALCULATION OF RVC ON THE BASIS OF

#### PRODUCER'S OPTION TO INCLUDE ALL VEHICLES OF CATEGORY OR ONLY CERTAIN EXPORTED

#### VEHICLES OF CATEGORY

(9) For purposes of this section, where a producer files a choice under subsection (1), (3) or (4), including a choice referred to in section 13(9), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made, shall be included in the calculation of the regional value content under any of the categories set out in subsection (5).

#### YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS;

## OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

(11) The following example is an "Example" as referred to in section 2(4).

*Example:*

466

### **Pt. 181, App. 19 CFR Ch. I (4-1-08 Edition)**

A motor vehicle producer located in NAFTA country A produces vehicles that fall within a category set out in section 11(5) that is chosen by the producer. The motor vehicles are to be sold in NAFTA countries A, B and C, as well as in country D, which is not a NAFTA country. Under section 11(1), the motor vehicle producer may choose that the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year. The producer may state in the choice the basis of the calculation as described in section 11(9)(a), in which case the calculation would be on the basis of all the motor vehicles produced regardless of where they are destined. Alternatively, the producer may state in the choice the basis of the calculation as described in section 11(9)(b). In this case, the producer would also need to state that the calculation is on the basis of

(a) the motor vehicles produced that are for export to NAFTA countries B and C;

(b) the motor vehicles produced that are for export to only NAFTA country B; or

(c) the motor vehicles produced that are for export to only NAFTA country C.

The calculation would be on the basis as described in the choice.

## SECTION 12. AUTOMOTIVE PARTS AVERAGING

### NC AND VNM FOR AUTOMOTIVE PARTS MAY BE AVERAGED TO DETERMINE RVC OF PARTS

(1) The regional value content of any or all goods that are of the same tariff provision listed in Schedule IV, or an automotive component assembly, an automotive component, a sub-component or a listed material, produced in the same plant, may, where the producer of those goods chooses to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the goods over the period set out in subsection (5) that is chosen by the producer with respect to any or all of those goods in any one of the categories set out in subsection (4) that is chosen by the producer; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

(2) The calculation of the regional value content made under subsection (1) shall apply with respect to each unit of the goods in the category set out in subsection (4) that is chosen by the producer and produced during the period chosen by the producer under subsection (5).

#### VNM FOR EACH UNIT IN A CATEGORY OF GOODS FOR WHICH AVERAGING USED

(3) The value of non-originating materials of each unit of the goods (a) in the category set out in subsection (4) chosen by the producer, and (b) produced during the period chosen by the producer under subsection (5), shall be the sum of the values of non-originating materials referred to in subsection (1)(a) divided by the number of units of the goods in that category and produced during that period.

#### CATEGORIES OF AUTOMOTIVE PARTS FOR AVERAGING

(4) The categories referred to in subsection (1)(a) are the following:  
(a) original equipment for use in the production of light-duty vehicles;  
(b) original equipment for use in the production of heavy-duty vehicles;  
(c) after-market parts;  
(d) any combination of goods referred to in paragraphs (a) through (c);  
(e) goods that are in a category set out in any of paragraphs (a) through (d) and are sold to one or more motor vehicle producers; and  
(f) goods that are in a category set out in any of paragraphs (a) through (e) and are exported to the territory of one or more of the NAFTA countries.

467

### **Bureau of Customs and Border Protection, DHS; Treasury Pt. 181, App.**

#### PERIODS FOR AVERAGING RVC FOR AUTOMOTIVE PARTS

(5) The period referred to in subsection (1)(a) is,  
(a) with respect to goods referred to in subsection (4)(a), (b) or (d), or subsection 4(e) or (f) where the goods in that category are in a category referred to in subsection 4(a) or (b), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year, or of the fiscal year of the motor vehicle producer to whom those goods are sold, remaining at the beginning of that period, or the fiscal year of that motor vehicle producer to whom those goods are sold; and  
(b) with respect to goods referred to in subsection (4)(c), or subsection (4)(e) or (f) where the goods in that category are in a category referred to in subsection (4)(c), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year, or of the fiscal year of the motor vehicle producer to whom those goods are sold, remaining at the beginning of that period, or the fiscal year of that producer or of that motor vehicle producer to whom those goods are sold.

#### CHOICE TO AVERAGE MAY NOT BE RESCINDED

(6) A choice made under subsection (1) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

(7) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(a), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for

(a) the remainder of the fiscal year of the motor vehicle producer to whom those goods are sold, where the producer chooses under subsection (9)(a) the

fiscal year of that motor vehicle producer; and

(b) the remainder of the fiscal year of the producer of those goods, where the producer does not choose under subsection (9)(a) the fiscal year of the motor vehicle producer to whom the goods are sold.

(8) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(b), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of, at the choice of the producer, the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold.

(9) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods, the producer may,

(a) with respect to goods referred to in subsection (5)(a), at the end of the fiscal year of the motor vehicle producer to whom those goods are sold, choose the fiscal year of that motor vehicle producer; and

(b) with respect to goods referred to in subsection (5)(b), at the end of the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold, as the case may be, choose the producer's fiscal year or the fiscal year of that motor vehicle producer.

#### APPLICABLE METHOD FOR AVERAGING VNM UNDER DIFFERENT CATEGORIES

(10) Where a producer chooses that the regional value content of goods be calculated in accordance with subsection (1) and the goods are in any of the categories set out in subsections (4) (d) through (f), the value of non-originating materials

(a) shall be determined in the manner set out in section 9, where any of those goods are light-duty automotive goods;

(b) shall be determined in the manner set out in section 10, where any of those goods are heavy-duty automotive goods but none of the goods are light-duty automotive goods; and

(c) shall be determined in the manner set out in section 7, where none of those goods are light-duty automotive goods or heavy-duty automotive goods.

468

#### **Pt. 181, App. 19 CFR Ch. I (4-1-08 Edition)**

#### YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(11) Where the producer of a good has calculated the regional value content of the good on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under subsection (1), the producer shall conduct an analysis, at the end of the producer's fiscal year following the end of that period, of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

#### SECTION 13. SPECIAL REGIONAL VALUE-CONTENT REQUIREMENTS

#### CHANGES IN REGIONAL VALUE CONTENT LEVEL FOR AUTOMOTIVE GOODS

(1) Notwithstanding the regional value-content requirement set out in Schedule I, and except as otherwise provided in subsection (2), the regional value-content

requirement for a good referred to in paragraph (a) or (b) is as follows:

(a) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 56 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 62.5 percent, in the case of

(i) a light-duty vehicle, and

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40, that is for use in a light-duty vehicle; and

(b) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 55 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 60 percent, in the case of

(i) a heavy-duty vehicle,

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40 that is for use in a heavy-duty vehicle, and

(iii) except in the case of a good referred to in paragraph (a)(ii) or provided for in any of subheadings 8482.10 through 8482.80, 8483.20 and 8483.30, a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use in a light-duty vehicle or a heavy-duty vehicle.

REGIONAL VALUE CONTENT LEVEL FOR MOTOR VEHICLES PRODUCED IN A NEW PLANT OR

IN A REFIT PLANT

(2) Notwithstanding the regional value-content requirement set out in Schedule I, the regional value-content requirement for a light-duty vehicle or a heavy-duty vehicle that is produced in a plant is as follows:

(a) not less than 50 percent for five years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler, if

(i) the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries,

(ii) the plant consists of, or includes, a new building in which the motor vehicle is assembled, and

(iii) the value of machinery that was never previously used for production, and that is used in the new building or buildings for the purposes of the complete motor vehicle assembly process with respect to that motor vehicle, is at least 90 percent of the value of all machinery used for purposes of that process; and

469

**Bureau of Customs and Border Protection, DHS; Treasury Pt. 181, App.**

(b) not less than 50 percent for two years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler following a refit of that plant, if the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not assembled by the motor vehicle assembler in the plant before the refit.

#### VALUE OF MACHINERY IN A NEW PLANT

- (3) For purposes of subsection (2)(a)(iii), the value of machinery shall be
- (a) where the machinery was acquired by the producer of the motor vehicle from another person, the cost of that machinery that is recorded on the books of the producer;
  - (b) where the machinery was used previously by the producer of the motor vehicle in the production of another good, the cost of the machinery that is recorded on the books of the producer minus accumulated depreciation of that machinery that is recorded on those books; and
  - (c) where the machinery was produced by the producer of the good, the total cost incurred with respect to that machinery, calculated on the basis of the costs that are recorded on the books of the producer.

#### AVERAGING PERIOD FOR CALCULATION OF RVC FOR VEHICLES OF NEW PLANT OR REFIT PLANT

- (4) For purposes of calculating the regional value content of a motor vehicle referred to in subsection (2) that is in any one of the categories set out in subsection (7) that is chosen by the producer, the producer may file with the customs administration of the NAFTA country into the territory of which vehicles in that category are to be imported a choice to calculate the regional value content of such vehicles by
- (a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer with respect to all of such motor vehicles in the category chosen over
    - (i) the period beginning on the day on which the first prototype of the motor vehicle is produced and ending on the last day of the producer's first fiscal year that begins on or after the beginning of the period,
    - (ii) a fiscal year of the producer that starts after the period referred to in subparagraph (i) and ends on or before the end of the period referred to in subsection (2)(a) or (b), or
    - (iii) the period beginning on the first day of the producer's fiscal year that begins before the end of the period referred to in subsection (2)(a) or (b) and ending at the end of that period; and
  - (b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

#### INFORMATION REQUIRED ON DOCUMENT FILED WHEN CHOOSING TO AVERAGE; TIMELY FILING;

- (5) A choice made under subsection (4) shall
- (a) state the category chosen by the producer and
    - (i) where the category referred to in subsection (7)(a) is chosen, the model name, model line, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and
    - (ii) where the category referred to in subsection (7)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the plant location at which the motor vehicles are produced;
  - (b) state the basis of the calculation described in subsection (8);
  - (c) state the producer's name and address;
  - (d) state the period with respect to which the choice is made, including the

starting and ending dates;

470

**Pt. 181, App. 19 CFR Ch. I (4-1-08 Edition)**

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) state whether the choice is with respect to a motor vehicle referred to in subsection (2)(a) or (b);

(g) be dated and signed by an authorized officer of the producer; and

(h) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

**NO RESCISSION OR MODIFICATION PERMITTED**

(6) A choice filed for the period referred to in subsection (4) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

**CATEGORIES OF MOTOR VEHICLES FOR AVERAGING**

(7) The categories referred to in subsection (4) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country.

(8) For purposes of subsection (4), the net cost incurred and the values of nonoriginating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (7).

**PERIOD FOR AVERAGING RVC OF MOTOR VEHICLES OF NEW OR REFIT PLANT**

(9) Where the period referred to in subsection (4) ends on a day other than the last day of the producer's fiscal year, the producer may, for purposes of section 11, make the choice referred to in that section with respect to

(a) the period beginning on the day following the end of that period and ending on the last day of that fiscal year; or

(b) the period beginning on the day following the end of that period and ending on the last day of the following full fiscal year.

**YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS**

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not

satisfy the regional value-content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.