**DEPARTMENT OF LABOR**

**Wage and Hour Division**

**29 CFR Part 810**

**RIN 1235–AA36**

# High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** In accordance with section 210(b) of the United States-Mexico-Canada Agreement Implementation Act, the U.S. Department of Labor is issuing regulations necessary to administer the high-wage components of the labor value content requirements as set forth in section 202A of that Act.

**DATES:** This interim final rule is effective on July 1, 2020. Interested persons are invited to submit written comments on this interim final rule (''IFR'') on or before August 31, 2020.

**ADDRESSES:** To facilitate the receipt and processing of written comments on this IFR, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA36, by either of the following methods:

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

*Mail:* Address written submissions to Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

*Instructions:* This IFR is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via the Wage and Hour Division's (WHD) website at *https://www.dol.gov/agencies/whd.* All comment submissions must include the agency name and Regulatory Information Number (RIN 1235–AA36) for this IFR. Response to this IFR is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this IFR. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this IFR; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this IFR may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be emailed to *WHD-USMCA-General@dol.gov.* Alternatively, if unable to send by email, inquiries can also be made by calling (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone.

## I. Executive Summary

On January 29, 2020, the United States-Mexico-Canada Implementation Act (''USMCA Implementation Act'' or ''Act'') was signed into law, which ratified the Agreement between the United States of America, the United Mexican States, and Canada (''USMCA'') and implemented its provisions. In general, and as relevant to the Department of Labor (''Department'') for this IFR, the Act requires that to receive preferential tariff treatment, a producer of a covered vehicle must file a certification that the production of the covered vehicle meets the high-wage components of the labor value content (''LVC'') requirements. The Act authorizes the Secretary of Labor (''Secretary''), in consultation with the Commissioner of U.S. Customs and Border Protection (''CBP''), to check the certification for omissions or errors and to verify whether a covered vehicle is in compliance with the high-wage components of the LVC requirements. This IFR implements the Act's requirements and establishes procedures for producers to follow concerning the high-wage components of the LVC requirements. Any entity seeking preferential tariff treatment when importing covered vehicles into the United States must comply with the Department's regulations set forth in this IFR, including for plants located in Mexico and Canada that it uses to satisfy the high-wage components of the LVC requirements.

The Act tasks the Department with enforcing the high-wage components of the three LVC requirements: The high-wage material and manufacturing expenditures, the high-wage technology expenditures credit, and the high-wage assembly expenditures credit. The high-wage material and manufacturing expenditures component requires a producer to have records demonstrating that a minimum percentage of the cost of the covered vehicle is composed of vehicle assembly labor and/or parts and materials from a North American (United States, Mexico, or Canada) plant or facility with a production wage rate, or average hourly base wage rate,[1] of at least US$16 per hour (or its equivalent in Mexican or Canadian currency). The high-wage assembly expenditures credit component allows a producer to receive a credit of five percent towards the total LVC requirement if it demonstrates that it operates, or has a long term contract with, a qualified assembly plant that has an average hourly base wage rate of at least US$16 per hour for hours worked in direct production. This IFR explains how producers must calculate the average hourly base wage rate, including what kind of work must be included in the calculation and how to treat certain workers for purposes of the calculation. The high-wage technology expenditures credit component allows a producer to receive an up to 10 percent credit towards its total LVC requirement based on its annual expenditures in North America on wages for research and development and information technology. This IFR explains how

[1] The USMCA refers to the ''average hourly base wage rate'' while the Uniform Regulations use the term ''average base hourly wage rate.'' *See* Uniform Regulations, Part IV, Sec. 12, ¶ 1. This rule uses the treaty language.

producers must calculate the high-wage technology expenditures credit. Other agencies administer the other components of the LVC requirements, and these regulations explain how the Department will coordinate with CBP and other federal agencies to fulfill its statutory mandate.

The Act requires that for a covered vehicle to receive preferential tariff treatment, a producer must certify that its production of covered vehicles meets the LVC requirements, including the high-wage components, and requires the Secretary, in consultation with CBP, to review the certification for omissions or errors before it is considered properly filed. This IFR details what information the producer submits to CBP in its certification that the Department will review for omissions or errors. The Act further gives the Secretary, in conjunction with the Secretary of the Treasury, authority to verify whether a covered vehicle complied with the LVC requirements. This IFR defines the scope of the Secretary's role in conducting these verifications and the process by which the Secretary will conduct these verifications.

To aid the Secretary in verifying producer compliance, the Act gives the Secretary authority to require a producer to make, keep, and render for examination and inspection, records and supporting documentation related to a producer's certification of compliance with the high-wage components of the LVC requirements. Pursuant to this authority and consistent with the USMCA's recordkeeping provisions, this IFR explains producers' recordkeeping responsibilities and the scope of the Secretary's authority to inspect such records.

This IFR also provides for an administrative review process of the Department's analysis and findings concerning a producer's compliance with the high-wage components of the LVC requirements. The administrative review will be conducted by either the WHD Administrator (''Administrator'') or by an official the Administrator designates as the presiding official; the presiding official may refer disputed questions of fact to the Chief Administrative Law Judge for a recommended decision.

The Act provides whistleblower protections to individuals who provide information relating to, or otherwise cooperate or seek to cooperate in, a verification of the LVC requirements. To implement these protections, this IFR describes the Department's whistleblower enforcement processes, including the filing of complaints, investigations, issuance of determinations, and the administrative review process.

The Department's estimates of the economic impact of this IFR are discussed in sections V. and VI. Pursuant to Executive Order 12866, the Office of Management and Budget's (''OMB'') Office of Information and Regulatory Affairs (''OIRA'') has determined that this IFR is economically significant. The Department has conducted a Regulatory Impact Analysis (''RIA'') to demonstrate the IFR's potential effects through a qualitative and quantitative analysis, consistent with Executive Order 13563. The Department quantified two direct costs to businesses: (1) Regulatory familiarization costs and (2) recordkeeping costs. Annualizing over 10 years, these costs are estimated to be $6.1 million per year at both a 3 percent and 7 percent discount rate. Producer adjustment costs, consumer costs, economic costs, and Departmental costs are discussed qualitatively. This IFR is exempt from Executive Order 13771, because this Executive Order expressly exempts regulations issued with respect to foreign affairs functions (5 U.S.C. 553).

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), OIRA designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

## II. Background

### *A. The Agreement Between the United States of America, the United Mexican States, and Canada*

On May 23, 2017, the United States Trade Representative (''USTR'') published in the **Federal Register** a notice of the United States' intention to begin negotiations with Canada and Mexico regarding modernization of the North American Free Trade Agreement (''NAFTA''). *See* 82 FR 23699. Through these negotiations, the United States sought to create more balanced, reciprocal trade that supports high-paying jobs for Americans and grows the North American economy. On November 30, 2018, the Governments of the United States of America, the United Mexican States, and Canada signed the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (''USMCA''), and on December 10, 2019 the three countries agreed to a Protocol of Amendments to the USMCA. All three countries ratified the USMCA; Mexico on December 12, 2019, the United States on January 29, 2020, and Canada on March 13, 2020.

The USMCA recognizes that international trade, investment, and economic growth can be facilitated through the implementation of government-wide practices that promote regulatory quality through greater transparency, objective analysis, accountability, and predictability. The USMCA also seeks to promote the protection and enforcement of labor rights, the improvement of working conditions, and the strengthening of cooperation on labor issues.

In support of these goals, the USMCA includes new rules of origin criteria for claiming preferential tariff treatment for automotive goods, including LVC requirements as set forth in Article 7 of the Appendix to Annex 4–B of the USMCA (''Automotive Appendix''). The LVC requirements promote more high-wage jobs for the U.S. auto industry by requiring that a significant portion of motor vehicles be made with high-wage labor.[2] The LVC requirements state that for a passenger vehicle, light truck, or heavy truck (''covered vehicle'') to be eligible for preferential tariff treatment, a minimum percentage of the cost of the vehicle must involve certain high-wage expenditures. After a transition period of 3 years with gradually increasing percentages (or longer if a producer successfully petitions to be covered under the USMCA's alternative staging regime),[3] as discussed in Articles 7 and 8 of the Automotive Appendix, at least 40 percent of the value of passenger vehicles and 45 percent of the value of light and heavy trucks must meet these high-wage expenditure requirements. The three categories of high-wage expenditures are as follows:

*i. High-wage material and manufacturing expenditures.*[4] The high-wage material and manufacturing expenditures provision requires that, after a phase-in period, beginning on July 1, 2023 at least 25 percent of the annual purchase value or net cost of a passenger vehicle, or 30 percent of the annual purchase value or net cost of a light truck or heavy truck, come from parts and materials used in the production of those vehicles, and

[2] *United States-Mexico-Canada Trade Fact Sheet: Rebalancing Trade to Support Manufacturing,* Office of the United States Trade Representative, *https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/rebalancing.*

[3] The alternative staging regime provides for a phase-in period of the LVC requirements and additional time to meet those requirements. *See* 85 FR 22238, 22239 (Apr. 21, 2020).

[4] The USMCA refers to ''high-wage material and manufacturing expenditures'' while the Uniform Regulations use the term ''high-wage material and labor expenditures.'' *See, e.g.,* Uniform Regulations, Part IV, Sec. 18, ¶ 1. This rule uses the treaty language.

produced in a North American production plant or facility, or from any labor costs in a North American vehicle assembly plant or facility, with a production wage rate of at least US$16 per hour.

*ii. High-wage technology expenditures.* The high-wage technology expenditures provision allows producers to claim a credit towards the LVC requirements of up to 10 percent. The credit is equal to the vehicle producer's total annual expenditures on wages in North America for research and development or information technology as a percentage of the producer's total annual expenditures on production wages.

*iii. High-wage assembly expenditures.* The high-wage assembly expenditures provision permits producers to claim a single credit of five percent towards the LVC requirements if the producer has an engine, transmission, or advanced battery assembly plant meeting certain production capacity standards, or has a long term contract with such a plant, in North America with an average production wage rate of at least US$16 per hour.

The USMCA also states that a claim for preferential tariff treatment, including preferential tariffs for automotive goods, must be based on a certification of origin completed by the importer, exporter, or producer. An importer claiming preferential tariff treatment for a good imported into a USMCA Country (the United States, Mexico, or Canada) must maintain all documentation, records, and information necessary to demonstrate the basis for the claim. Exporters and producers must maintain all records necessary to support a claim for preferential tariff treatment for a good for which the exporter or producer provided a certification of origin.

The USMCA further provides that the USMCA Countries may conduct a verification of a certification or claim for preferential tariff treatment. Pursuant to the USMCA, such verifications may include written requests for information and documentation, onsite visits to production plants and facilities, as well as other procedures to be decided by the USMCA Countries.

### *B. United States-Mexico-Canada Agreement Implementation Act*

On January 29, 2020, the United States-Mexico-Canada Implementation Act (''USMCA Implementation Act'' or ''Act'') was signed into law, ratifying the USMCA and implementing its provisions. Section 202A of the Act, codified at 19 U.S.C. 4532, provides that a covered vehicle is eligible for preferential tariff treatment when imported into the United States only if the producer has provided a certification that the production of the covered vehicle meets the LVC requirements, including the high-wage components. *See* 19 U.S.C. 4532(c)(1)(A). The producer must have information on record to support the calculations on which its certification is based, and maintain records supporting such calculations. *See* 19 U.S.C. 4532(c)(1)(A). The Secretary, in consultation with the Commissioner of CBP, must review these certifications for errors or omissions before the certification can be considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B).

The Act also describes the procedures for verification of preferential tariff claims, including preferential tariff claims for covered vehicles. Section 4532(e)(1) authorizes the Secretary of the Treasury, in conjunction with the Secretary, to verify whether a covered vehicle is in compliance with the LVC requirements. *See* 19 U.S.C. 4532(e)(1). The Secretary is charged, in cooperation with the Secretary of the Treasury, with verifying whether the production of covered vehicles meets the high-wage components of the LVC requirements, including the high-wage material and manufacturing expenditures, high-wage technology expenditures, and high-wage assembly expenditures discussed above. *See* 19 U.S.C. 4532(e)(2). As part of these verifications, the Act authorizes the Secretary to examine any record, and request information from any officer, employee, or agent of a producer of automotive goods that may be relevant with respect to whether the production of the covered vehicle complied with the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(A). Relevant records and information include records and information relating to wages, hours, job responsibilities, and other information in any plant or facility relied on by the producer to demonstrate compliance with the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(B). The Act also prohibits retaliation against any person who discloses information relating to a verification or otherwise cooperates in a verification. *See* 19 U.S.C. 4532(e)(5).

### *C. Interim Guidance From USTR and CBP*

CBP published its USMCA Interim Implementing Instructions on April 20, 2020, and on June 16, 2020 published a revised version (''CBP Implementing Instructions''). This guidance is intended to provide information as to how to make preferential tariff claims under the USMCA pending the issuance of applicable regulations.[5] These instructions, which do not have legal or binding effect, provide general guidelines as to the rules of origin and regional value content requirements for goods imported into the United States from Canada or Mexico, how importers may claim preferential tariff treatment for imported goods, and the general process for submitting a certification of origin.[6] The instructions also describe CBP's general recordkeeping requirements for importers who have made a preferential treatment claim and for any person who has completed a USMCA certification of origin or provided a written representation for a good exported from the United States to another USMCA Country. They also provide information as to how CBP will conduct a verification of a claim to preferential tariff treatment and issue a determination conveying the verification results.

In addition to this general guidance on preferential tariff claims under the USMCA, the CBP Implementing Instructions provide more specific information about the additional requirements applicable to automotive goods. For example, the CBP Implementing Instructions provide, in part, information relating to the rules of origin for automotive goods and LVC certification procedures and requirements. Annex B of the CBP Implementing Instructions, developed in coordination with the Department, provides guidance on what certification information the Department will review for omissions or errors. This topic is discussed in more detail in this IFR. Certain aspects of the Department's regulations may differ from the information provided in the CBP Implementing Instructions. If there are such differences, the Department's regulations are controlling.

On April 21, 2020, USTR published the Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks

[5] U.S. Customs and Border Protection, *United States-Mexico-Canada Agreement (USMCA) Interim Implementing Instructions,* modified June 16, 2020, *available at https://www.cbp.gov/document/guidance/usmca-interim-implementation-instructions.*

[6] The CBP Implementing Instructions state: ''This document is for advance informational and advisory purposes only. It is not final and is subject to further revision. It is not intended to have legal or binding effect. Any decisions a reader makes based on this draft document are made with the understanding that the information in this document is advisory only and may change. The reader is responsible for monitoring the CBP website to ensure awareness of the status of any revisions to this document.''

To Use the Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods, a notice in the **Federal Register** providing guidance to vehicle producers for requesting an alternative to the standard staging regime for the USMCA rules of origin for automotive goods, including the LVC requirements. *See* 85 FR 22238. The notice specifies the vehicle producers that are eligible to petition for an alternative staging regime and the requirements that must be met during and after the alternative staging regime. It sets forth the timeline for filing petitions for alternative staging and details the information that must be included in the petitions. The notice also describes the process that USTR will use to review and approve such petitions. The notice also explains the process for requesting a modification of an approved alternative staging plan, which the vehicle producer must make whenever there are material changes to information contained in a petition that will affect the producer's ability to meet any of the requirements set forth in Articles 2 through 7 of the Automotive Appendix after the alternative staging period has expired. The notice also specifies that vehicle producers that do not meet the requirements of the alternative staging regime are not eligible for preferential tariff treatment pursuant to the alternative staging regime.

*D. Uniform Regulations*

The USMCA provides that the parties to the agreement shall, by entry into force of the agreement, adopt Uniform Regulations regarding the interpretation, application, and administration of, in part, Chapter 4 (Rules of Origin) and other matters as may be decided by the parties to the agreement. *See* USMCA, Article 5.16. The Uniform Regulations regarding, in part, Chapter 4 (Rules of Origin) and Chapter 5 (Origin Procedures) adopted on June 3, 2020 represent a trilateral agreement between the United States of America, the United Mexican States, and Canada regarding the interpretation, application, and administration of Chapter 4 and Chapter 5 of the USMCA. The Department intends the regulations set forth in this IFR to be consistent with the Uniform Regulations.

*E. Inapplicability of Notice and Delayed Effective Date Requirements Procedures*

Pursuant to 5 U.S.C. 553(a)(1), public notice and comment procedures are inapplicable to these interim regulations because they involve a ''foreign affairs function of the United States.'' The delay caused by public notice and comment procedures would prevent these regulations from being in place on the date that the USMCA enters into force. A failure to have the regulations in place setting forth the procedures implementing important rules for preferential tariff treatment of automobiles would provoke undesirable international consequences by inhibiting the execution of the United States' obligations under the USMCA and creating international uncertainty about the United States' enforcement of tariff preferences.

In addition, the Department for good cause finds, pursuant to 5 U.S.C. 553(b)(B), that the public notice and comment requirements are impracticable and contrary to the public interest, and thus should not apply to these regulations. The USMCA's LVC requirements, which the Department is tasked in part with enforcing, apply once the USMCA enters into force. *See* 19 U.S.C. 4532(h). Accordingly, these regulations establish procedures that the public must know by the entry-into-force date in order to claim the benefit of a tariff preference under the USMCA. The Uniform Regulations, which required the agreement of the United States of America, the United Mexican States, and Canada, were only adopted on June 3, 2020. This IFR's regulations, however, must be consistent with the Uniform Regulations and could not be completed and prepared for public notice and comment until the Uniform Regulations were adopted. Given the recent adoption of the Uniform Regulations and the approaching date on which the USMCA enters into force, following public notice and comment procedures could prevent the implementation of these regulations by the entry-into-force date, leading to harmful consequences for stakeholders throughout the automotive industry. Furthermore, because these are interim regulations, the public will have an opportunity to comment and provide input for the final rule, reducing any impact from the lack of notice.

Finally, for the above-listed reasons, the Department has determined that good cause exists under 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

## III. Additions for 29 CFR Part 810

The provisions relating to the Department's role in enforcing the high-wage components of the LVC requirements of the USMCA are described and interpreted by the Secretary in regulations to appear in new part 810 of Title 29 of the Code of Federal Regulations, and addressed below.

*Subpart A—General*

Section 810.2 Purpose and Scope

This section briefly describes the purpose of the USMCA and the Act, and the Department's role in enforcing the wage-related components of the USMCA's LVC requirements. WHD is issuing the regulations in part 810 in accordance with 19 U.S.C. 4535(b), which requires the Secretary to prescribe regulations necessary to carry out the LVC determination under 19 U.S.C. 4532, and 19 U.S.C. 1508(b)(4), which grants the Secretary authority to prescribe regulations relating to the recordkeeping requirements detailed in 19 U.S.C. 1508(b)(4). The Secretary has delegated this authority to the Administrator. The Department administers the high-wage components of the LVC determination. Other agencies administer the other components of the LVC requirements, and the regulations in this part explain how the Department will coordinate with CBP and other federal agencies to fulfill its statutory mandate.

The Department's principal responsibility under the USMCA is to evaluate and verify worker wage rates. For assessing high-wage material and manufacturing expenditures and high-wage assembly expenditures, the Department must determine whether workers earned an average hourly base wage rate of at least US$16 per hour for the time worked in direct production. For assessing the high-wage technology expenditures credit, the Department must evaluate wages paid to research and development and information technology workers.

Section 810.3 Definitions and Use of Terms

This section defines terms that are used throughout this IFR. Many of the terms in this IFR are already defined in the USMCA. Where noted in this section, these terms invoke the USMCA's definitions; however, because of variations in how certain terms are used in the USMCA, the meanings of certain terms vary slightly across the IFR. For example, the terms ''importer'' and ''exporter'' are defined in Appendix 5 of the USMCA. Except where indicated otherwise, the term ''producer'' as used in this rule encompasses the terms ''importer'' and ''exporter,'' as these three terms are often referenced together in the treaty, and the regulations generally apply uniformly to all three types of entities. However, when used in § 810.405, for example, the term ''producer'' means only ''producer of the covered vehicle.'' This exception is necessary because

only the producer of the covered vehicle may provide a certification that the covered vehicle meets the applicable LVC requirements. *See* 19 U.S.C. 4532(c)(1)(A).

Many of the terms used in this rule are most relevant to the portions of the LVC requirements within CBP's purview. Unless otherwise stated, the definitions used in these regulations are intended to be consistent with CBP's use of the terms. Where these regulations use terms relating to the LVC requirements without providing a corresponding definition, the Department intends such terms to have the meaning as understood by CBP and (where applicable) explained in its guidance and regulations.

Other definitions are provided in this rule to ensure that there is a uniform use and understanding of the terms, which will aid in this rule's administration. These terms, such as ''Administrative Law Judge'' and ''Administrator,'' adopt standard Department definitions used in other rules.

*Subpart B—Calculating the High-Wage Component of Material and Manufacturing Expenditures*

Section 810.100 Scope and Purpose of This Subpart

The USMCA Implementation Act authorizes the Secretary, in conjunction with the Secretary of the Treasury, to verify whether covered vehicle production complies with the high-wage components of the LVC requirements set forth in the USMCA. *See* 19 U.S.C. 4532(e). The high-wage material and manufacturing expenditures component of the LVC requires producers to demonstrate that a minimum percentage of the cost of the vehicle is composed of vehicle assembly labor costs, and/or parts and materials expenditures, from a North American plant or facility with an average hourly base wage rate of at least US$16 per hour. The Department works in conjunction with CBP to verify producer compliance. Specifically, the Department is responsible for verifying whether workers engaged in direct production work at a plant or facility included in a producer's material and manufacturing expenditures calculation earn an average hourly base wage rate of at least US$16 per hour. This subpart addresses calculation of this high-wage aspect. All other aspects of material and manufacturing expenditures, including determining the percentage of the cost of a covered vehicle that assembly labor or specific parts and components constitutes, are within the purview of CBP and/or other federal agencies and addressed by their regulations and other guidance.

Section 810.105 Calculating the Average Hourly Base Wage Rate

Subsection 810.105(a) sets forth the overarching rule that the average hourly base wage rate for a plant or facility is calculated by dividing the total base wages paid for all hours worked in direct production by the total number of hours worked in direct production. The USMCA does not define ''average hourly base wage rate,'' but instead defines ''production wage rate'' for a plant or facility as ''the average hourly base wage rate, not including benefits, of employees directly involved in the production of the part or component used to calculate the LVC[.]'' *See* Automotive Appendix, Article 7.3 n.77. Thus, the terms ''production wage rate'' and ''average hourly base wage rate'' are interchangeable for purposes of calculating a producer's high-wage material and manufacturing expenditures for a plant or facility. The Department considers the term ''average hourly base wage rate'' more descriptive and useful for calculation purposes, and generally uses that term.

Subsection 810.105(b) describes the three components of the average hourly base wage rate calculation: The hourly base wage rate, hours worked in direct production, and total base wages.

The hourly base wage rate is the rate of compensation a worker is paid for each hour worked in direct production work. The hourly base wage rate refers to the base rate of pay for an individual worker, whereas the average hourly base wage rate refers to the average rate of pay for a group of workers in a plant or facility. In determining the hourly base wage rate for each worker, the producer must exclude all benefits, bonuses, premium payments, incentive pay, overtime premiums, and all other similar payments. ''Similar payments'' include, for example, profit-sharing bonuses, tooling allowances, collective bargaining agreement ratification bonuses, and performance bonuses. Excluding such payments from the average hourly base wage rate calculation adopts a bright-line rule that is consistent with both the plain meaning of the term ''base'' and with the USMCA's language that the ''production wage rate is the average hourly base wage rate, not including benefits[.]'' *See* Automotive Appendix, Article 7, n.77. In contrast, including other types of payments in the base wage rate would undermine the treaty's plain meaning and increase administrative complexity. The Department's approach also strengthens the US$16 per hour standard, which increases the likelihood that producers will use American plants to meet the LVC requirements, and in turn promotes more high-wage jobs for U.S. auto industry workers.

Amounts deducted from a worker's pay generally may be included in the hourly base wage rate to the extent they are for the benefit of the worker and are reasonable. WHD will look to the principles outlined in 29 CFR part 531 to determine whether a deduction is for the benefit of the employee and is reasonable, and therefore may be included in the hourly base wage rate. For example, reasonable amounts deducted for board and lodging may be included in a worker's hourly base wage rate, *see* 29 CFR 531.3, as may amounts deducted for taxes assessed against the employee, *see* 29 CFR 531.38, and amounts deducted for payments to third persons pursuant to a court order, *see* 29 CFR 531.39. Conversely, amounts deducted for tools, equipment, or uniforms may not be included in a worker's hourly base wage rate, *see* 29 CFR 531.32(c).

The second component of the average hourly base wage rate calculation is to determine the number of hours worked in direct production by each worker. This means all time a worker spends personally involved in the production of passenger vehicles, light trucks, heavy trucks, or parts used in the production of these vehicles at a plant or facility located in North America, or directly involved in the set-up, operation, or maintenance of equipment or tools used in the production of those vehicles or parts at that plant or facility. The total number of hours worked in direct production at a plant or facility, as referenced in subsection (a), is calculated by adding together hours in direct production (as calculated under subsections (b)(2)(i) and (b)(2)(ii)) for all workers who perform direct production work at that plant or facility.

Subsection (b)(2)(i) provides that, except for executive and management staff, certain engineers, and other workers described in § 810.130, if at least 85 percent of a worker's total work hours are worked in direct production during the time period the producer uses to calculate the average hourly base wage rate, *see* § 810.105(d), the worker's total work hours are considered hours worked in direct production, and are included in the average hourly base wage rate calculation. This is consistent with the Uniform Regulations, which provide that ''[f]or direct production workers, the average base hourly wage rate of pay is calculated based on all their working hours[,]'' and define

''direct production worker'' as ''any worker whose primary responsibilities are direct production work, meaning at least 85 percent of the worker's time is spent performing direct production work.'' Uniform Regulations, Part VI, Sec. 12, ¶ 1. Subsection (i) is also consistent with the USMCA's production wage rate definition, which emphasizes the wage rate of workers ''directly involved in the production of the part or component used to calculate the LVC.'' *See* Automotive Appendix, Article 7, n.77.

Subsection (b)(2)(ii) provides that, except for workers described in § 810.130 (for whom all hours worked are excluded), if less than 85 percent of a worker's total work hours are worked in direct production, only the worker's hours worked in direct production are included in the average hourly base wage rate calculation. This is similarly consistent with the Uniform Regulations provision that ''[f]or other workers performing direct production work [who are not direct production workers], the average hourly rate is calculated based on the amount of hours performing direct production work.'' Uniform Regulations, Part VI, Sec. 12, ¶ 1.

The 85 percent threshold described in § 810.105(b) should simplify compliance with the high-wage components of the LVC requirements by permitting producers to count all hours (and pay) for workers who spend most of their time performing direct production work. This bright-line approach minimizes compliance burdens and promotes administrative efficiency. Also, including in the average hourly base wage rate all direct production hours for any worker who performs direct production work (except for workers described in § 810.130), helps ensure that the average hourly base wage rate appropriately reflects wages paid for direct production work.

The third component of the average hourly base rate calculation is calculating ''total base wages''—*i.e.,* the cumulative base wages for all time that workers spend performing direct production work. This calculation involves two steps. First, multiply each worker's hourly base wage rate by that worker's number of hours worked in direct production at that rate. The hourly base wage rate is set forth in subsection (b)(1) and hours worked in direct production is set forth in subsection (b)(2). Second, total the values calculated in step one to obtain total base wages paid for all hours worked in direct production at the plant or facility. As previously discussed, all of a worker's hours worked are considered hours worked in direct production (and are included in the average hourly base wage rate calculation) for workers who satisfy the 85 percent threshold in § 810.105(b)(2)(i), while for workers under § 810.105(b)(2)(ii), only hours worked in direct production are included. This calculation does not include any hours (whether in direct production or otherwise) for workers described in § 810.130 (*e.g.,* executives, management, research and development workers, certain engineers, and other personnel).

Once the above calculations are performed (for the appropriate time period as set forth below), the average hourly base wage rate is calculated by dividing the total base wages by the total number of hours worked in direct production.

Neither the USMCA, its implementing legislation, nor the Uniform Regulations address how to calculate the hourly base wage rate ''average.'' The Department has chosen to calculate this average by dividing workers' total base wages for direct production work by their total number of hours worked in direct production, rather than by calculating the hourly base wage rate for each worker, and then averaging those individual rates.[7] The Department believes that its chosen approach is more consistent with the Department counting hours worked in direct production toward the average hourly base wage rate. In contrast, the alternative approach is less consistent because it uses a single wage rate for each worker, including for workers who receive that rate in part for performing work that is not direct production work. The chosen approach may also strengthen the US$16 per hour standard because computing the average using the total number of hours worked in direct production may prevent an upward skewing of the average that could occur under the alternative method, under which highly paid workers working relatively few hours in direct production would have equal computational weight to lower-paid workers who work all or virtually all hours in direct production. Finally, as addressed in more detail in the discussion of § 810.120, by dividing by the total number of hours workers spend performing direct production work, the Department's chosen approach allows employers to appropriately weight the wages of full- and part-time workers, without having to apply any special rules or computations for part-time workers. This uniform approach decreases administrative complexity and promotes efficiency.

Subsection 810.105(c) provides that a producer must include all hours worked in direct production at a plant or facility (other than by workers described in § 810.130), and the pay for such hours, when calculating the average hourly base wage rate for that plant or facility. This is consistent with the Article 7.3 of the Automotive Appendix, which provides that the average hourly base wage rate at a ''vehicle assembly plant or facility'' must be at least US$16 per hour for the parts or materials produced in that facility and, if the producer elects, labor costs in vehicle assembly at that facility count towards the high-wage material and manufacturing expenditures. Automotive Appendix, Article 7.3(a). Additionally, where a worker is paid by a third party (such as a temporary employment agency), only the wages received by the worker (and deductions that are for the worker's benefit and are reasonable, as described in § 810.105(b)(1)(ii)) are included in the average hourly base wage rate calculation.

Subsection 810.105(d) provides the time period over which a producer can calculate the average hourly base wage rate. The time period options are taken from Article 7.5 of the Automotive Appendix, which permits calculating the LVC over any one of the following periods: (1) The previous fiscal year of the producer; (2) the previous calendar year; (3) the quarter or month to date in which the vehicle is produced or exported; (4) the producer's fiscal year to date in which the vehicle is produced or exported; or (5) the calendar year to date in which the vehicle is produced or exported. In computing the average hourly base wage rate, the producer may use only base wages earned and hours worked in direct production (as set forth in subsection 810.105(b)(2)) during the selected time period. Thus, for example, if in 2022 a producer elects to calculate

[7] These approaches can yield different results. For example, assume Worker A earned $800 in base wages for 40 hours of direct production work and Worker B earned $200 in base wages for 20 hours of direct production work. Under the chosen approach, a producer would compute the average by dividing the total base wages ($1,000) by the total hour worked in direct production (60), producing an average hourly base wage rate of $16.67 (which satisfies the US$16 per hour LVC threshold). Under the alternative approach, the producer would average the hourly rate for each worker ($20 for Worker A and $10 for Worker B), resulting in an average hourly base wage rate of $15 per hour, which is less than the LVC threshold. The outcome could change (with the chosen approach resulting in a lower rate than the alternative approach) depending on the facts in a particular case. How to compute the average is distinct from determining what pay to include in the hourly base wage rate (under § 810.105(b)(1)) and what work hours to include when calculating the average hourly base wage rate (as discussed in § 810.105(b)(2)).

the average hourly base wage rate using the previous calendar year (under § 810.105(d)(2)), its calculations would encompass hourly base wage rates for hours worked in direct production from January 1, 2021 through December 31, 2021.

Section 810.110 Examples of Direct Production Work

Section 810.110 provides a non-exhaustive list of examples of types of work that constitute direct production work for purposes of calculating the average hourly base wage rate. The Department includes these examples to help producers understand which types of work to include when properly calculating the average hourly base wage rate. These examples are consistent with the USMCA, as they describe types of work performed by ''employees directly involved in . . . production[.]'' Automotive Appendix, Article 7.3 n.77.

Consistent with the Uniform Regulations, subsection (a) explains that direct production work includes production of vehicles and parts, including both manufacture and assembly, as well as the operation or maintenance of equipment used in the production of vehicles and parts. Direct production work is not specific to a single location in the plant or facility; it may take place on a production line, at a workstation, on the shop floor, or in another production area. As to specific tasks, direct production work includes material handling of vehicles or parts; inspections of vehicles or parts, including inspections that are normally categorized as quality control, and for heavy trucks, pre-sale inspections carried out at the place where the vehicle is produced; on-the-job training regarding the execution of a specific production task; and maintaining and ensuring the operation of the production line or production area and the operation of tools and equipment used in the production of vehicles or parts, including the cleaning of the line or production area and the places around it. Direct production work may be performed by skilled tradespeople, such as process or production engineers, mechanics, technicians, and other employees, responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the direct production of vehicles or parts. Consistent with Article 7.3 of the Automotive Appendix and the Uniform Regulations, direct production work does not include research and development work or engineering work unrelated to maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts.

Subsection (b) explains that except for workers described in § 810.130, time spent, for example, by line supervisors and team leads, engaged in providing on-the-job training regarding the execution of a specific production task or relieving a worker in the performance of direct production duties is direct production work. On-the-job training generally involves direct production work and often occurs on the production line, at a workstation, on the shop floor, or in another production area. Such activities would include, for example, a line supervisor staying at a workstation with a worker to guide the worker through how to perform a task the worker has been assigned. Relief work also constitutes hours worked in direct production because in such instances the supervisor is performing the same direct production work performed by the relieved worker, and which would normally be included in that worker's hours worked in direct production. However, time spent managing workers, including supervising workers performing direct production work, is not itself direct production work, and therefore is not included in the average hourly base wage rate calculation.

The Department invites comments from stakeholders concerning what, if any, additional examples of direct production work should be included in the final rule.

Section 810.115 Paid Meal Time and Paid Break Time

Section 810.115 explains how to treat paid meal and break times when calculating the average hourly base wage rate. Such time counts as direct production work for purposes of determining (under § 810.105(b)(2)(i)) whether at least 85 percent of a worker's total work hours—a figure that includes paid meal time and paid break time for purposes of the USMCA—are hours worked in direct production. However, if less than 85 percent of a worker's total work hours are worked in direct production, paid meal time and paid break time are not considered hours worked in direct production when applying § 810.105(b)(2)(ii). Unpaid meal time and unpaid break time are never included in the average hourly base wage rate calculation.

Counting paid meal and break time toward the 85 percent threshold is a fair approach that will simplify the average hourly base wage rate calculation and ease burdens on producers. In contrast, a simple example illustrates how excluding such time from the 85 percent threshold could undermine the threshold and thus the USMCA's objectives. A full-time worker who works 8 hours per day, 5 days per week, during the producer's certification period must spend at least 34 hours per week (*i.e.,* 85 percent of 40 hours) performing direct production work to meet the 85 percent threshold. If such a worker received a 30-minute paid meal break and two 15-minute paid rest breaks each work day (totaling 5 hours per week), and such hours did not count toward the 85 percent threshold (but were considered part of total hours worked), the worker would not meet the 85 percent threshold if the worker spent more than 1 additional hour per week performing work that is not direct production work. This outcome could result in more workers who spend virtually all of their time performing direct production work nonetheless not meeting the 85 percent threshold. Such a result could undermine the interests in administrative efficiency underlying the 85 percent threshold, and create disincentives to providing workers paid meal and break times—time which may help to promote worker efficiency. Given such consequences, the Department believes its treatment of paid meal time and paid break time is consistent with the Uniform Regulations.

Section 810.120 Part-Time, Temporary, Seasonal, and Contract Workers

Subsection 810.120(a) provides that hours of part-time workers, temporary workers, and seasonal workers are treated the same as hours of full-time workers for purposes of calculating the average hourly base wage rate. The Department understands that such workers are common in the automobile industry, and sees no basis in the USMCA or the Act for treating such workers differently than permanent full-time workers when calculating the average hourly base wage rate. What matters for USMCA purposes is the worker's base rate of pay and the type of work the worker performs, not the timing of the worker's work or whether it technically is provided on a part-time or full-time basis. The Department's equal treatment of all workers is reflected in the average hourly base wage rate calculation, which appropriately weights the pay and hours worked for all workers by simply dividing the total base wages paid for all hours worked in direct production by the total number of hours worked in direct production. A different approach (such as granting producers discretion to exclude these workers from its

calculations under certain circumstances) could skew the calculations so that they do not accurately represent the actual average hourly base wage rates for time workers spent performing direct production work. Without accurate average hourly base wage rates, the Department could not effectively verify whether producers have complied with the high-wage components of the LVC requirements, thereby undermining the purpose of the USMCA and the Act.

Subsection 810.120(b) provides that workers' hours are included in the average hourly base wage rate calculation even if the workers do not have an employment relationship with the producer. This could include, for example, contract workers and workers employed by staffing agencies who perform direct production work. This approach is consistent with the treaty text, which emphasizes whether employees are directly involved in production work, *see* Automotive Appendix, Article 7.3 n.77, not whether they are directly employed by the producer or another entity. In addition, § 810.120(b) promotes transparency by helping ensure that all direct production work is included in the average hourly base wage rate calculation, regardless of how a working relationship is structured. As with the workers addressed in § 810.120(a), the inclusion of these workers' hours will result in more representative calculations that more precisely reflect the actual average hourly base wage rates, which will allow the Department to accurately verify whether producers have complied with the high-wage components of the LVC requirements.

Section 810.125 Workers Paid on a Non-Hourly Basis

Section 810.125 explains how to factor the wages of workers paid on a non-hourly basis into the average hourly base wage rate calculation. While the USMCA refers to the average hourly base wage rate, the Department recognizes that not all workers who perform direct production work are paid on an hourly basis. Given this reality, and to help ensure that the average hourly base wage rate calculation does not exclude workers who perform direct production work based solely on whether they are paid hourly, the Department interprets the USMCA as permitting workers paid on a basis other than hourly to be included in the average hourly base wage rate calculation. To do otherwise would in effect force a producer to convert to hourly status any worker it wants to include in its average hourly wage rate calculations. This promotes neither the USMCA's purpose nor efficient business practices.

Accordingly, if any worker performing direct production work is compensated by a method other than hourly, such as a salary, piece-rate, or day-rate basis, the worker's hourly base wage rate shall be calculated by converting the salary, piece-rate, or day-rate to an hourly equivalent. The Department will follow standard WHD practices in converting non-hourly wages to an hourly equivalent. WHD regularly does such conversions in the Fair Labor Standards Act (''FLSA'') context and for several other statutes it enforces. After performing the conversion, the hourly equivalent rate is then multiplied by the worker's number of hours worked in direct production for purposes of calculating the average hourly base wage rate.

Subsection 810.125(b) provides examples of specific types of conversions using standard WHD practices where a salary, piece-rate, or day-rate wage is paid to a worker on a (1) weekly or bi-weekly, (2) semi-monthly, or (3) a monthly basis.

Section 810.130 Executive, Management, Research and Development, Engineering, and Other Personnel

Section 810.130 provides a list of the types of workers whose hours worked are never included in the average hourly base wage rate calculation. Subsection (a) excludes from the average hourly base wage rate any hours worked by executive or management staff who generally have the authority to make final decisions to hire, fire, promote, transfer, and discipline employees. This regulation, which largely tracks the Uniform Regulations and is consistent with its intent, is meant to provide helpful guidance to the regulated community on the duties indicative of executive or management staff. It is not intended to condone including in the average hourly base wage rate direct production work hours of executive or management staff who, for example, perform all but one of the enumerated duties, or make decisions on all of the listed duties, but not ''final decisions'' on one of the listed duties. The Department will closely scrutinize the designation of employees as not falling within this category when conducting verifications in order to ensure compliance with the USMCA's position that the average hourly base wage rate exclude the ''salaries of management[.]'' *See* Automotive Appendix, Article 7, n.77.

Subsection 810.130(b) excludes from the average hourly base wage rate any hours worked by workers engaged in research and development. Subsection 810.130(c) excludes engineers, mechanics, or technicians, if such personnel are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts. These provisions are consistent with the Uniform Regulations, which provide that direct production work does not include ''any work by workers engaged in research and development, or work by engineering or other personnel that are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts.'' Uniform Regulations, Part VI, Sec. 12, ¶ 1. The Department interprets ''or other personnel'' in the Uniform Regulations to encompass mechanics or technicians—skilled workers who, under the Uniform Regulations, perform direct production work when they are ''responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts,'' but who do not perform direct production work, and thus cannot be included in the average hourly base wage rate calculation, when they do not meet that requirement. Uniform Regulations, Part VI, Sec. 12, ¶ 1. A contrary interpretation of ''other personnel'' that, for example, encompassed all other types of workers, could unduly exclude direct production work from the average hourly base wage rate calculation in a manner that the Department believes is contrary to the USMCA and the intent underlying the Uniform Regulations.

Section 810.135 Interns, Students, and Trainees

Section 810.135 provides that hours worked by an intern, student, or trainee who does not have an express or implied compensation agreement with the employer are not considered hours worked in direct production. Accordingly, the hours worked by such workers are not included in the average hourly base wage rate calculation. Conversely, if an intern, student, or trainee has an express or implied compensation agreement with the employer, the intern, student, or trainee's hours and pay are treated like any other worker in the average hourly base wage rate calculation, as described in § 810.105. This approach is consistent with the Uniform Regulations, which address interns, students, and trainees in the average

base hourly wage rate and direct production work definitions. *See* Uniform Regulations, Part VI, Sec. 12, ¶ 1.

Section 810.140 High-Wage Transportation or Related Costs for Shipping a High-Wage Part or Material

Section 810.140 provides that a producer may include in its high-wage material and manufacturing costs high-wage transportation or related costs for shipping a high-wage part or material within the USMCA Countries, if these high-wage transportation or related costs have not otherwise already been included in the annual purchase value calculations. This section tracks the Automotive Appendix, Article 7.3 n.75, and properly credits a producer who uses high-wage labor to perform transportation and shipping work. As defined and described in more detail in the Uniform Regulations, ''high-wage transportation or related costs for shipping'' refers to the costs that a producer incurs on transportation, logistics, or material handling services where the relevant service provider paid an average hourly base wage rate of at least US$16 per hour to the provider's direct production workers performing these services. For purposes of this section, such workers include, for example, drivers and loaders performing the transportation, logistics, or material handling of a part or component. The Department may verify the hourly base wage rate for such workers by examining the transportation or shipping providers' contracts, including collective bargaining agreements entered into by the transportation or shipping company, and other indications of the wages paid to these workers.

Section 810.145 Currency Exchange

Section 810.145 explains that the high-wage component of material and manufacturing expenditures (and assembly expenditures under § 810.300) is expressed in U.S. dollars—US$16 per hour. Pursuant to the USMCA and its implementing statute, the Department may review certifications and conduct verifications of plants or facilities in Mexico and Canada that pay wages in the Mexican peso or Canadian dollar. Accordingly, the Department may need to review average hourly base wage rate calculations of producers based on wages paid in the respective domestic currencies. In reviewing those calculations, the Department will follow the rules governing currency exchange set forth in the Uniform Regulations, *e.g.,* Uniform Regulations, Part I, Sec. 2, ¶ 1; Part IV, Sec. 12, ¶ 1, and regulations and/or guidance issued by the Department of the Treasury and/or CBP.

Section 810.150 Adjustment of the Average Hourly Base Wage Rate

This section provides that in the event the USMCA Countries agree to adjust the average hourly base wage rate from US$16 per hour, the Department's regulations will continue to apply and the Department will use the new average hourly base wage rate. A change in this dollar amount does not affect the principles set forth in the Department's regulations, and so continuing to apply these regulations is appropriate. This section will ensure continuity and avoid the misimpression that a change to the average hourly base wage rate would require the Department to promulgate new regulations. In addition, to ensure that the regulated community is aware of the change, WHD will publish a notice in the **Federal Register** alerting the public of the new dollar amount of the average hourly base wage rate requirement.

*Subpart C—Calculating the High-Wage Technology Expenditures Credit*

Section 810.200 High-Wage Technology Expenditures Credit

This section explains how to calculate the second high-wage component of the LVC requirements, the high-wage technology expenditures credit. Article 7.3 of the Automotive Appendix provides that a producer is entitled to a high-wage technology expenditures credit equal to ''the annual vehicle producer expenditures in North America on wages for research and development (''R&D'') or information technology (''IT'') as a percentage of total annual vehicle producer expenditures on production wages in North America.'' As explained in this section, a producer may receive a 10 percent credit towards its total LVC requirement by demonstrating that the sum of its annual expenditures in North America on wages for R&D and IT is equal to or greater than 10 percent of its annual expenditures on production wages in North America. If a producer's annual expenditures in North America on wages for R&D and IT are less than 10 percent of the producer's annual expenditures in North America on production wages, then the producer is eligible for a credit equal to the actual percentage of the producer's annual expenditures in North America on wages for R&D and IT as a percentage of its total annual expenditures in North America on production wages. In other words, the high-wage technology expenditures credit is calculated as follows, with a maximum allowable credit of 10 percent:

$$\text{High-wage technology expenditures credit} = \frac{\text{Total annual expenditures in North America on wages for R\&D + IT}}{\text{Total annual expenditures in North America on production wages}} \times 100$$

Consistent with the USMCA, and as described in more detail in the Uniform Regulations, for purposes of the calculation, ''annual expenditures in North America on wages for R&D'' means total annual corporate spending in North America on wages for research and development, including prototype development, design, engineering, testing, or certifying operations. *See* Automotive Appendix, Article 7.3, n. 79; *see also* Uniform Regulations, Part VI, Sec. 12, ¶ 1. Likewise, ''annual expenditures in North America on wages for IT'' means total annual corporate spending in North America on wages for information technology, including software development, technology integration, vehicle communications, and information technology support operations. *See* Automotive Appendix, Article 7.3, n. 80. The Department invites comment on the types of R&D and IT work performed for automotive producers, including how often such workers perform other types of work in addition to their R&D and IT duties. Similarly, consistent with the USMCA, ''annual expenditures in North America on production wages'' means total annual corporate spending on wages for production of passenger vehicles, light trucks, and heavy trucks in North America. *See* Automotive Appendix, Article 7.

The Department interprets the term ''wages'' for purposes of the high-wage technology expenditures credit as meaning all wages paid to relevant

workers, including bonuses, premium payments, incentive pay, and overtime premiums. ''Wage'' in this context is distinct from the ''hourly base wage rate'' defined in § 810.105(b)(1), as the treaty language addressing the high-wage technology expenditures credit refers to ''wages'' broadly as opposed to the narrower ''base wages'' used for calculating the high-wage material and manufacturing expenditures component and the high-wage assembly expenditures credit. Thus, for purposes of calculating the numerator in the above formula, producers must total expenditures for all wages paid to workers in North America for the research and development and information technology work described above. Similarly, for purposes of calculating the denominator in the above formula, producers must total expenditures for all wages paid to workers in North America who perform direct production work. Producers often keep this data regarding total expenditures on wages in the normal course of business, and thus this interpretation of ''wages'' should provide administrative efficiency for producers.

*Subpart D—Calculating the High-Wage Assembly Expenditures Credit*

Section 810.300 High-Wage Assembly Expenditures Credit

This section describes the requirements for calculating the high-wage assembly expenditures credit, the third high-wage component of the LVC requirements. Consistent with Article 7 of the Automotive Appendix, § 810.300(a) explains that a producer may receive a credit of five percent towards the total LVC requirement if it demonstrates that it operates, or has a long term contract with, a qualified assembly plant. An assembly plant qualifies a producer for the high-wage assembly expenditures credit if it is a North American high-wage engine assembly plant, transmission assembly plant, or advanced battery assembly plant that meets certain minimum annual production capacity requirements. Five percent is the only possible assembly expenditures credit that producers may receive; producers may not receive a credit of less than five percent if they qualify for the high-wage assembly expenditures credit and may not receive a credit of greater than five percent if they identify more than one qualified assembly plant.

Subsections 810.300(a)(1)–(3) explain the three types of assembly plants that may qualify a producer for the high-wage assembly expenditures credit. Qualified assembly plants may be engine, transmission, or advanced battery assembly plants, must be ''high-wage,'' and must meet certain levels of minimum annual production capacities of originating parts. As detailed in § 810.300(c), these minimum annual production capacity levels are set forth in Article 7 of the Automotive Appendix and in the Uniform Regulations. The required minimum annual production capacity levels are not included in this section because they are outside of the Department's authority and are instead within CBP's purview. Thus, producers should consult the Uniform Regulations and CBP guidance to ensure that relevant assembly plants meet the required minimum annual production capacity levels required for the producer to qualify for the high-wage assembly expenditures credit.

Subsection 810.300(b) further explains that in order to be considered ''high-wage'' for purposes of the high-wage assembly expenditures credit, an assembly plant must have an average hourly base wage rate of at least US$16 per hour for the entire plant. This requirement is consistent with Article 7 of the Automotive Appendix, which requires an assembly plant to have an average production wage of at least US$16 per hour to qualify for the high-wage assembly expenditures credit. To ensure consistency across calculations for the LVC requirements, the average production wage for the high-wage assembly expenditures credit is determined by calculating the average hourly base wage rate in the same manner as for the high-wage material and manufacturing expenditures credit, as detailed in § 810.105.

Subsection 810.300(d) clarifies that the definition of ''long term contract'' for purposes of this section is set forth in the Uniform Regulations. *See* Uniform Regulations, Part IV, Sec. 18, ¶¶ 12–14.

Subsection 810.300(e) allows a producer to use an assembly plant that it relied on to satisfy the high-wage material and manufacturing expenditures component of the LVC requirement to also qualify for the high-wage assembly expenditures credit if that assembly plant meets the requirements of § 810.300(a). The Department recognizes that an assembly plant used by a producer to meet the high-wage material and manufacturing expenditures component could also be a qualified plant for purposes of the high-wage assembly expenditures component. Therefore, this section permits producers to use the same plant for both high-wage components if all requirements are met.

*Subpart E—Certification Provisions*

Section 810.400 Scope and Purpose of This Subpart

In order to receive preferential tariff treatment under the Act, a producer must certify that its production of covered vehicles meets the LVC requirements, including the high-wage components of the LVC requirements that the Department administers. *See* 19 U.S.C. 4532(c)(1)(A). The Secretary, in consultation with CBP, must ensure that the producer's certification submitted to CBP does not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B)(i). Consistent with the Act, the Department's certification role is limited to reviewing the high-wage components of the LVC certification for omissions or errors. All other certification matters are outside of the Secretary's purview, and are addressed in the Uniform Regulations and regulations and/or guidance issued by CBP or other federal agencies.

Section 810.405 Certification

Consistent with the requirements of the Act, and to aid the Department in fulfilling its statutory mandate, this section lists the information submitted by producers to CBP that WHD will review for omissions or errors. The certification information described in this section that WHD will review relates to the high-wage components of the LVC requirements that the Department administers.

Under subsection 810.405(a)(1), WHD will review the certifying vehicle producer's name, corporate address, Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, and a point of contact. This information will provide context for the certification and help streamline the verification process.

Under subsection 810.405(a)(2), WHD will review the vehicle class, model line, or other relevant category the motor vehicles covered by the certification. The producer need not provide a detailed description of the vehicles, but need only provide

sufficient information to enable WHD to distinguish other certifications filed by the same producer. This information will enable WHD to review certifications more efficiently by eliminating potentially duplicative submissions.

Under subsection 810.405(a)(3), WHD will review the time period the producer is using for its LVC calculations. The time period options are taken from Article 7 of the Automotive Appendix, which permits calculating the LVC over any one of the following periods: (1) The previous fiscal year of the producer; (2) the previous calendar year; (3) the quarter or month to date in which the vehicle is produced or exported; (4) the producer's fiscal year to date in which the vehicle is produced or exported; or (5) the calendar year to date in which the vehicle is produced or exported. The period a producer selects will be the period its LVC certification is valid. *See* 19 U.S.C. 4532(c)(1)(B)(ii). WHD must know the date range the producer used to perform its calculations in order to ensure that the high-wage components of the certification are properly filed for a given import, and to review the relevant records in the event of a verification.

Under subsection 810.405(a)(4), WHD will review the name, address, and Federal Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number used by CBP, for each plant or facility the producer of the covered vehicle is relying on to meet the high-wage material and manufacturing expenditures component of the LVC requirements. WHD will use this information to learn what plants and facilities the producer is relying on to meet the LVC requirements. In addition, this information will streamline the verification process if WHD needs to contact a plant or facility during a verification.

Under subsection 810.405(a)(5), WHD will review the producer's affirmative statement that the average hourly base wage rate meets or exceeds US$16 per hour for each plant or facility identified in § 810.405(a)(4). Including this information in the certification form will assist WHD in identifying potential errors in the producer's determination that it may use a particular plant or facility to meet the high-wage components of the LVC requirements, and will streamline the verification process.

If the producer is using high-wage transportation or related costs to meet the high-wage material and manufacturing expenditures component, under § 810.405(a)(6) WHD will review the producer's affirmative statement that indicates such use, and review the company name and other identifying information for each company the producer used to calculate its high-wage transportation or related costs. This information will allow WHD to identify the transportation companies that the producer is using so that, in the event of a verification, WHD can confirm the companies' average hourly base wage rates.

If the producer is using the high-wage technology expenditures credit to meet the LVC requirements, under § 810.405(a)(7) WHD will review the producer's affirmative statement that indicates such use, and the percentage the producer is claiming as a credit towards the total LVC requirement. Documenting the percentage the producer is claiming as a high-wage technology expenditures credit as part of the certification will demonstrate that the producer has performed this calculation as required, ensure that producers recognize that a record of qualifying expenditures must be maintained in connection with this certification, and streamline the verification process.

If the producer is using the high-wage assembly expenditures credit to meet the LVC requirements, under § 810.405(a)(8) WHD will review the producer's affirmative statement that indicates such use, and the plant name and other identifying information for the assembly plant the producer used to qualify for the high-wage assembly expenditures credit. Under this subsection, WHD will also review the producer's affirmative statement that the average hourly base wage rate meets or exceeds US$16 per hour for the assembly plant identified in the certification. This information will assist WHD in identifying potential errors or omissions in the producer's certification and will streamline the verification process.

Subsection 810.405(b) requires a producer of the covered vehicle to ensure that records are kept of information to support its compliance with the high-wage components of the LVC requirements, including the calculations submitted under §§ 810.405(a)(5), (a)(7), and (a)(8)(ii). This subsection is consistent with the implementing statute. *See* 19 U.S.C. 4532(c)(1)(A)(ii). Such information will generally be in records that producers must ensure are kept under the recordkeeping requirements set forth at § 810.600, and should not be submitted as part of the certification. This subsection further explains that producers are responsible for ensuring that records are provided to the Department upon request, as described in § 810.600(c), but that these records may be physically maintained by a supplier or contractor and that the Department will accept records directly from a supplier or contractor if, for example, the producer has contracted for such an arrangement. As discussed in more detail later in this preamble, the Department may request this supporting information when conducting a verification to determine whether a producer met the high-wage components of the LVC requirements.

Subsection 810.405(c) explains that requirements in subsection 810.405(a) apply to all producers of covered vehicles whether or not they are subject to the alternative staging regime. While the LVC percentage benchmarks change for producers subject to the alternative staging regime period, the high-wage components of the LVC requirements that the Department verifies do not change. Specifically, the US$16 per hour requirement (for high-wage material and manufacturing expenditures and assembly expenditures) and the wage calculation for high-wage technology expenditures are fixed. Accordingly, producers subject, and not subject, to the alternative staging regime will submit, and WHD will review, the same information described in § 810.405. This uniform approach decreases regulatory complexity and will simplify and help expedite the Department's review of producer certifications.

Section 810.410 Administrator's Review for Omissions or Errors

The Act requires the Secretary, in consultation with CBP, to ensure that each producer's certification does not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B)(i). The Administrator will review each certification for omissions or errors relating to the high-wage components of the LVC requirements. An omission would include, for example, the producer failing to include with its certification any portion of the information listed in § 810.405(a). An error would include, for example, a certification based on the wrong type of information (such as a time period not

listed in § 810.405(a)(3)). If the Administrator determines that the high-wage components of the certification contain no omissions or errors, WHD will notify CBP that the high-wage components of the certification have been properly filed.

USMCA Article 5.7 states that a USMCA Country ''shall not reject a certification of origin due to minor errors or discrepancies that do not create doubts concerning the correctness of the import documentation'' and provides importers ''not less than five working days to provide the customs administration [of the importing country] a corrected certification of origin.'' Consistent with this requirement and as described in § 810.410(b), if the Administrator determines that the certification contains an omission or error, WHD will notify CBP, and CBP will require the producer to submit a modified certification, or otherwise contest the Administrator's determination that the certification contains an omission or error. If the producer submits a modified certification in response to this notice, the Administrator will review the modified certification for omissions or errors.

If, upon review of the original or modified certification, the Administrator determines that it contains no omissions or errors, WHD will notify CBP that the high-wage components of the certification have been properly filed. If the producer does not successfully contest the notice of deficiency or submit a modified certification in response to the notice, or if the modified certification contains omissions or errors, WHD will notify CBP that the high-wage components of the certification have not been properly filed. The producer may appeal this decision pursuant to the regulation at § 810.700. Regardless of the Administrator's determination of filing status, however, CBP retains complete authority over all decisions concerning whether to grant or deny preferential tariff treatment based on certification information reviewed by WHD.

*Subpart F—Verification of the Labor Value Content's Wage Components*

Section 810.500 Scope and Purpose of This Subpart

This provision details the authority of the Secretary to participate in verifications of compliance with the USMCA's LVC requirements as well as the scope of the Secretary's role in those verifications. The Act gives the Secretary of the Treasury, in conjunction with the Secretary, authority to verify whether a covered vehicle complied with the LVC requirements set forth in the USMCA. *See* 19 U.S.C. 4532(e)(1). The purpose of the regulations in this subpart is to define the Secretary's role in conducting these verifications and the process by which the Secretary will conduct these verifications. Specifically, the Secretary, through the Administrator, will verify compliance with the high-wage components of the LVC requirements. Verifications of other components of the LVC requirements are outside of the Secretary's purview and are described in the Uniform Regulations and regulations and guidance issued by CBP and/or the Department of the Treasury.

Section 810.505 Scope of Verification

Subsection 810.505(a) permits the Administrator, or the Administrator's designee, to verify, through investigation, whether a producer complied with the high-wage components of any part of the LVC requirements. The regulation explains that the producer is responsible for all aspects of compliance with the high-wage components of the LVC requirements at its plants and facilities as well as the plants and facilities of the suppliers and contractors listed in its certification. For example, notwithstanding any agreement between the producer and a supplier or contractor, as discussed in § 810.600(d), it is ultimately the responsibility of the producer to ensure that records are properly maintained and provided to the Department upon request. For the wage component of the high-wage material and manufacturing expenditures provision of the LVC requirements, the Administrator may verify whether the average hourly base wage rate in any plant or facility relied on by the producer in its certification meets the US$16 per hour requirement. If the producer's certification claims transportation or related costs for shipping as part of its high-wage material and manufacturing expenditures calculation, as detailed in § 810.405(a)(6), the Administrator may verify whether any transportation, logistics, or material handling provider relied on by the producer in its certification meets the US$16 per hour requirement. Verifications of other components of the material and manufacturing expenditures provision of the LVC requirements are conducted by CBP. The Administrator may also verify that the producer properly claimed a credit for high-wage technology expenditures, as explained in § 810.200. For verifications of the high-wage assembly expenditures provision of the LVC requirements, the Administrator may also verify whether an engine, transmission, or advanced battery assembly facility that a producer relied on in its certification has an average hourly base wage rate of at least US$16 per hour. Verifications of any other component of the high-wage assembly expenditures credit are conducted by CBP.

Subsection 810.505(b) provides the investigation methods the Administrator may use in the course of a verification. The Act grants the Secretary authority, which has been delegated to the Administrator, to examine, or cause to be examined, upon reasonable notice, any record (including any statement, declaration, document, or electronically generated or machine-readable data) described in the Administrator's notice with reasonable specificity. *See* 19 U.S.C. 4532(e)(4)(A)(i). The Act states that the Secretary shall assist the Secretary of the Treasury to carry out these actions. 19 U.S.C. 4532(e)(4)(A). The Department interprets this provision to mean that the Secretary of the Treasury, through CBP, has the primary role of conducting verifications of the LVC requirements, and that the Secretary will assist CBP by using these methods to verify whether the production of covered vehicles meets the high-wage components of the LVC requirements.

The Administrator may examine these records in person as part of a verification visit, or may request the producer to provide them electronically or by mail. Article 5.9, paragraph 7 of the USMCA explains that for verifications, each USMCA Country must provide producers at least 30 days to respond to written requests for information and 30 days to respond to requests to open facilities for a verification visit. Accordingly, the Department interprets the term ''reasonable notice'' as used in the Act to mean 30 days' notice. The Act grants the Secretary authority to request information from any officer, employee, or agent of a producer of automotive goods, as necessary, that may be relevant with respect to whether the production of covered vehicles meets the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(A)(ii). As the statute gives the Secretary broad authority to request information that may be relevant, the Department interprets the term ''employee'' in this context to include any worker at a plant or facility relied on in the producer's certification, regardless of the worker's employment relationship with the producer. This encompasses, for example, workers

employed by a staffing agency. To help ensure receipt of accurate information, the information may be obtained under oath, at the discretion of the Administrator.

Subsection 810.505(c) describes the specific content of the records the Administrator is authorized to request and examine. As the Administrator's role in verifications is to verify the high-wage components of the LVC requirements, the Administrator may request and examine records relating to wages, hours, job responsibilities, or any other information related to the producer's certification that it meets the high-wage components of the LVC requirements. The specific types of records that the Administrator may request are those that producers are required to maintain under this rule's recordkeeping requirements, *see* § 810.600, and will often include worker time records, payroll records, and information that the producer is required (under 19 U.S.C. 1508(b)(4)) to keep on record to support its certification calculations. The Administrator will review the provided records to verify that the high-wage components of the producer's LVC calculations are correct.

Subsection 810.505(d) explains that the Administrator will conduct its verification consistent with the timelines in Article 5.9 of the USMCA. Article 5.9 details the requirements for verification of all the rules of origin, of which the LVC requirements make up just one. It provides timelines for requesting verification visits or information from producers, producers' responses to those requests, completion of the verification, and issuance of a written determination. Most of the timelines apply to actions within the purview of CBP, *e.g.,* issuance of a written determination. However, the Administrator will conduct verifications consistent with these timelines to the extent they are applicable to the Administrator's verification. For example, paragraph 10 of Article 5.9 pertains to requests from producers for postponement of a verification visit. Consistent with paragraph 10, the Administrator (acting through, and subject to approval by, CBP) will allow a producer, on a single occasion, within 15 days of receipt of a notification requesting a verification visit, to request the postponement of the proposed verification visit for a period not exceeding 30 days from the proposed date of the visit.

Section 810.510 Notice to a Producer That a Verification of Compliance With Labor Value Content Requirements Has Been Initiated

This section provides that CBP will notify a producer that a verification of LVC compliance has been initiated, regardless of which component(s) of the LVC requirements are the subject of that verification. CBP makes determinations regarding grants or denials of preferential tariff treatment and thus is responsible for notifying producers if a verification of LVC compliance that may implicate such preferential tariff treatment has been initiated.

CBP is responsible for notifying a producer that a verification of LVC compliance has been initiated, both for verifications that CBP initiates, and for verifications the Administrator has initiated with CBP. The Administrator's role in initiating verifications with CBP is limited to verifications concerning all aspects of the high-wage components of a producer's LVC certification and supporting records and calculations. CBP may initiate and conduct verifications of the components of a producer's LVC certification and may ask the Administrator to conduct a verification of the high-wage components. Regardless of how the verification is initiated, CBP will provide notice to the producer.

Section 810.515 Conduct of Verifications

This section explains how the Administrator will conduct verification visits, where appropriate. Article 5.9 of the USMCA authorizes an importing USMCA Country to use a variety of techniques to conduct verifications, including verification visits to the premises of the producer of the good in order to request documents and other information, and observe the production process and the related facilities. As the Administrator is authorized to conduct verifications, the Administrator may conduct verification visits. During these visits, the Administrator may request and inspect documents, interview workers or others on the premises, inspect the facility, and gather any other information as the Administrator deems necessary to the verification. As the Administrator can verify compliance only with a portion of the LVC requirements, the Administrator will coordinate with CBP and other federal agencies in the course of conducting any verifications, as appropriate. The Administrator also retains discretion to involve other federal agencies, as well as agencies within the Department such as the Bureau of International Labor Affairs, in its verifications, as appropriate.

Section 810.520 Confidentiality

This section provides that the Administrator will protect the confidentiality of any person who provides information to the Department in confidence in the course of a verification under this subpart to the full extent possible under existing law. This includes, for example, invoking the government informant's privilege where appropriate. The intent of this section is to provide assurances of confidentiality, to the extent possible, to any person who provides information to the Department, in the hope that such assurances encourage those with information relevant to the Department's investigations or verifications to provide information to, or speak openly with, the Department. Retaliation against any person who provides such information is prohibited under the Act's whistleblower provisions, as implemented in § 810.800.

Section 810.525 Notice Provided to CBP Regarding the Administrator's Findings

This section provides that upon completion of a verification, the Administrator will provide CBP with the verification findings and a written analysis explaining the basis for those findings. Article 5.9, paragraph 14, of the USMCA requires the importing USMCA Country to provide the producer subject to a verification with a written determination of whether the goods at issue qualify for preferential tariff treatment, including the findings of facts and legal basis for that determination. As discussed *supra,* CBP makes all determinations regarding grants or denials of preferential tariff treatment. Accordingly, CBP will provide this written determination to the producer at the conclusion of a verification. If, however, the Administrator participated in a verification because it involved the verification of one or more of the high-wage components of the LVC requirements, the Administrator will provide CBP with the verification findings and an analysis explaining the basis of those findings so that CBP can include relevant information in the written determination ultimately provided to the producer.

Section 810.530 Verification of Labor Value Content Compliance for Producers Subject to Alternative Staging Regime

Verification procedures outlined in this subpart apply to producers as soon as the USMCA enters into force, whether or not the producers are subject to the alternative staging regime. The Act provides that the Administrator may conduct verifications of compliance with the LVC requirements, regardless of whether the producer is subject to the alternative stage regime. *See* 19 U.S.C. 4532(d)–(e). The Administrator's role in administering the LVC requirements does not change if a producer is subject to the alternative staging regime. Accordingly, verifications conducted by the Administrator are conducted in the same manner when a producer is subject to the alternative staging regime.

*Subpart G—Recordkeeping Requirements*

Section 810.600 Recordkeeping Requirements

Article 5.8 of the USMCA requires USMCA Countries to require importers, exporters, and producers to maintain records necessary to demonstrate the validity of certifications of origin. These records include those relating to the production of goods, including covered vehicles. Article 5.9 of the USMCA authorizes USMCA Countries to request such documentation during the verification process. The Act requires importers who claim preferential tariff treatment under the USMCA for goods imported into the United States from a USMCA Country, and vehicle producers whose goods are the subject of a claim for preferential tariff treatment under the USMCA, to make, keep, and, pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection records and supporting documents related to the labor value content requirements. *See* 19 U.S.C. 1508(b)(4). The Act further grants the Secretary authority during the course of a verification to request any records relating to wages, hours, job responsibilities, or any other information in any plant or facility relied on by a producer of covered vehicles to demonstrate that the production of those vehicles meets the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(B). Pursuant to these authorities, this section of the rule details the recordkeeping obligations of importers, exporters, and producers of covered vehicles necessary to demonstrate compliance with the high-wage components of the LVC requirements.

Subsection 810.600(b) provides that although electronic records are generally preferred, as such records are easily generated, maintained, and made available for inspection, the records described in this section may be made and maintained in any form or format. However, pursuant to Article 5.8, paragraph 3 of the USMCA, the records must be in a form or format that allows the records to be promptly retrieved and printed or copied.

Consistent with the verification procedures set forth in Article 5.9 of the USMCA and 19 U.S.C. 4532(e), § 810.600(c) provides that the records described in this section must be made available to an authorized representative of the Department for inspection, copying, and transcription upon written request to the producer. The request will describe the records that are being sought, and the party receiving the request will have 30 days from the date of the written request to provide the requested records to the Department in an accessible format, unless the party has requested and obtained an extension of that time.

Consistent with Article 5.8 of the USMCA, § 810.600(d) provides that importers must ensure that the records described in § 810.600 are maintained for 5 years from the date of importation of any vehicle for which preferential tariff treatment was claimed, and exporters and producers must ensure that the records described in § 810.600 are maintained for 5 years from the date on which the certification of origin was completed. To the extent the producer relies in its certification on plants or facilities it does not operate, the plant or facility may maintain its records relevant to the producer's certification, provided the producer can ensure such records to support its certification are properly maintained and provided to the Department upon request within the 30-day timeframe provided for in § 810.600(c). The same obligation applies where a plant or facility, whether operated by the producer or another entity, uses contract workers, such as workers employed through a staffing agency, or where the producer counts high-wage transportation or related costs for shipping toward its LVC obligations. Thus, in such instances, the producer must either have or be able to produce (or have the contractor produce) upon request within the 30-day timeframe provided for in § 810.600(c) the records described in this section for such workers, if such records are relevant to the producer's certification. The Department will accept records directly from a supplier or contractor where, for example, the producer and supplier or contractor have contracted for such an approach.

Subsection 810.600(e) details the specific records that must be preserved and maintained to demonstrate compliance with the high-wage material and manufacturing expenditures component and eligibility for the high-wage assembly expenditures credit. These records are necessary for the Department to verify that wages for all hours worked in direct production have been appropriately included in the computation of the average hourly base wage rate, and to ensure that benefits, bonuses, premium payments, incentive pay, overtime premiums, or other similar payments have been properly excluded from that calculation. Moreover, to enable the Department to verify that a producer's average hourly base wage rate calculation is correct, the records described in this section must cover the entirety of the time period used by the producer to calculate the average hourly base wage rate for each plant or facility relied upon to meet the LVC requirements.

Subsection 810.600(e) provides that producers must maintain certain records for all workers who worked at any plant or facility relied upon by the producer to meet the high-wage material and manufacturing expenditures component or to qualify for the high-wage assembly expenditures credit and who are subject to the FLSA recordkeeping requirements under 29 CFR 516.2. If such workers are employed outside the United States, but if employed in the United States would be subject to the recordkeeping requirements under 29 CFR 516.2, the producer must also maintain the records detailed in this subsection for such workers. Since, due to recordkeeping obligations under the FLSA, plants and facilities in the United States generally already maintain records for most workers who work in direct production, the requirements in § 810.600(e) should impose little to no additional recordkeeping burden for those plants and facilities.

Producers must also maintain the records required under subsection 810.600(e) for workers in any USMCA Country who have performed direct production work during the relevant time period but who are exempt from the recordkeeping requirements of 29 CFR 516.2, if the producer relied on those workers in its computation of the average hourly base wage rate. Such workers include, for example, workers who are exempt from the FLSA's minimum wage and overtime requirements under 29 CFR part 541

and those workers who would be exempt if employed in the United States (*i.e.,* where the FLSA applies).

The specific records producers are required to maintain for the workers discussed above are outlined in §§ 810.600(e)(1)–(6). Subsection 810.600(e)(1) explains that these records must contain, for each worker, the full name (or identifying symbol or number if one is used in place of the worker's name on any time, work, or payroll records), job title, home address, and other available contact information. These records are needed for the Department to determine which workers should be interviewed during a verification to obtain information about hours worked in direct production, job duties, and pay. This information also enables the Department to locate for interviews workers who are no longer working at the plant or facility in question.

Subsection 810.600(e)(2) provides that producers must keep records of the total number of daily and weekly hours worked by each worker. Such records are necessary to help the Department determine whether all hours worked in direct production were correctly included in the computation of the hourly base wage rate by, for example, comparing workers' hours worked in direct production with their total hours worked in the same time period. This subsection also explains that if a worker has a fixed schedule, working the same shifts and the same number of hours each week, the producer may instead maintain a record of the worker's scheduled hours. However, if this recordkeeping method is used, there must be verification by some method each week that the worker did in fact work the scheduled hours, and, in the occasional workweeks when the worker does not work the scheduled hours, a record of the actual hours worked each day and in total for those workweeks.

Subsection 810.600(e)(3) requires producers to keep certain earnings records. These earnings records include payroll records showing the date wages were paid and the time period covered by such wage payments, each worker's hourly rate of pay and basis of pay (*e.g.,* hourly, salary, piece rate, day rate, etc.), total daily or weekly straight-time earnings, total premium pay for any overtime hours worked, total pay for the pay period, and any deductions taken from each worker's pay. To the extent that a worker's rate of pay or straight-time earnings include benefits, bonuses, premium payments, incentive pay, or other similar payments excluded from the hourly base wage rate, as defined in § 810.105(b)(1), the producer must keep records that clearly identify those payments and state the amount of such payments. This information is necessary for the Department to verify that each worker's hourly base wage rate was correctly calculated when computing the average hourly base wage rate for the relevant time period. For example, identifying the hourly rate and the basis of pay allows the Department to confirm that the hourly base wage rate has been correctly computed for workers who are paid on a salary, piece-rate, day-rate, or other basis. Identification of premiums, benefit payments, and other similar payments, such as incentive pay or bonuses, is necessary to ensure that such payments were not incorrectly included in the hourly base wage rate, while deductions must also be examined to ensure that the deductions were properly factored into the hourly base wage rate. WHD will apply the principles outlined in 29 CFR part 531 to determine whether a deduction may be included in the hourly base wage rate. For example, amounts deducted for board and lodging generally will be included in a worker's hourly base wage rate, while amounts deducted for tools and equipment will not.

Subsection 810.600(e)(4) provides that producers must keep records of any collective bargaining agreements, written agreements or memoranda, individual contracts, plans, trusts, employment contracts, or written memorandum summarizing oral agreements or understandings applicable to any workers who work in direct production. Such agreements help verify the average hourly base rate by showing the pay rates that have been agreed upon for such workers, as well as disclosing additional agreed-upon payments or benefits, so that the Department can confirm that such payments or benefits were not included in the computation of the average hourly base wage rate.

To ensure that the average hourly base wage rate has been calculated correctly for the high-wage material and manufacturing expenditures and the high-wage assembly expenditures components, § 810.600(e)(5) requires a record to be maintained of all hours worked in direct production, as defined at § 810.105(b)(2), by workers at any plant or facility used to meet the high-wage component of the LVC requirements during the relevant time period. This record must include each worker's name, type of direct production work performed, hours worked by each worker that constitute direct production work, the hourly base wage rate paid to each worker for the direct production hours worked, and the total wages paid to workers for those direct production hours worked. These records must distinguish hours worked in direct production from other hours worked, to the extent that workers perform both direct production work and work not in direct production during the relevant time period. However, if at least 85 percent of a worker's total work hours are hours worked in direct production, a record may be kept of total work hours during the time period used for certification purposes. In that case, the recordkeeping system must also record hours worked in direct production and hours spent not performing direct production work in weeks when both types of work are performed, must record the hours at the time the work is performed, and must ensure the hours worked in direct production are clearly ascertainable so that WHD can verify, if necessary, that the 85 percent threshold was in fact reached for such workers.

If a producer uses high-wage transportation or related costs for shipping a high-wage part or component in calculating the high-wage material and manufacturing costs, § 810.600(e)(6) requires maintenance of records demonstrating that the transportation, logistics, or material handling provider paid production workers performing the transportation of the part or component, such as drivers and loaders, an average hourly base wage rate of at least US$16. Such records might include, for example, the contracts with the transportation or shipping provider, collective bargaining agreements entered into by the transportation or shipping company, and other indications of the wages paid to these workers. This information is necessary to enable the Department to verify the accuracy of the producer's LVC calculations in those instances where transportation or related costs have been used to calculate the high-wage material and manufacturing expenditures.

Subsection 810.600(f) requires any producer claiming a credit for high-wage technology expenditures to maintain records demonstrating the wages paid by the producer for research and development or information technology work in North America, as well as the wages paid by the producer for production work in North America. The credit for high-wage technology expenditures is obtained through a comparison of expenditures on wages for research and development and information technology work in North America to expenditures on wages for production work in North America. Producers claiming this credit must therefore maintain a record of all wages

paid to workers who perform research and development and information technology work in North America, including the workers' names and the type of research and development or information technology work performed by each worker. Producers also must maintain a record of the total wages paid to workers who perform direct production work in North America, including the workers' names and the type of production work performed by each worker. Maintenance of records demonstrating this information is necessary for the Department to verify that the credit was calculated correctly.

The records listed in § 810.600(e) are not necessarily an exhaustive list of the records producers must keep. As explained in § 810.600(g), if a producer relied on any additional records not listed in §§ 810.600(e) or (f) to support its calculations demonstrating that it meets the high-wage components of the LVC requirements, then the producer must also maintain those additional records. This requirement is consistent with 19 U.S.C. 4532(c)(1)(a)(ii), which requires producers to have information on record to support the LVC calculations submitted in its certification.

Subsection 810.600(h) provides that nothing in § 810.600 shall excuse any producer with facilities in the United States from complying with any recordkeeping or reporting requirement imposed by any other federal, state, or local law, ordinance, regulation, or rule. This includes, but is not limited to, recordkeeping requirements under the FLSA, the Family and Medical Leave Act, and state wage and hour laws, as well as any recordkeeping requirements concerning other components of the LVC requirements as set forth in regulations issued by CBP or any other federal agency.

*Subpart H—Administrative Review of the Department's Analysis and Findings*

Section 810.700 Administrative Review Procedures

This section describes the procedures the Department will use to engage in an administrative review of its initial verification analysis conducted under subpart F. As set forth in 19 U.S.C. 4532(e)(6), a protest filed with CBP under 19 U.S.C. 1514 (the Tariff Act of 1930) may relate to a producer's eligibility for preferential tariff treatment of a covered vehicle. If such a protest involves the Department's analysis relating to the high-wage components of the LVC requirements, the Secretary must conduct an administrative review of the decision and provide the results of that review to CBP. *See* 19 U.S.C. 4532(e)(6)(A)(i)–(ii). The procedures outlined in this section describe how the Department will implement these requirements. In addition, and to promote simplicity and uniformity, the Department will follow these procedures when responding to a producer's appeal of a written notification under § 810.410(b) that the high-wage components of the producer's certification were not properly filed due to an omission or error.

Under § 810.700(a), consistent with 19 U.S.C. 4532(e)(6)(A)(i), upon being notified by CBP that a protest has been filed under 19 U.S.C. 1514 that relates to the Department's analysis of the high-wage components of the LVC requirements, the Department will conduct an administrative review of its initial analysis.

Subsection 810.700(b) provides that this administrative review will be conducted either by the Administrator or by an official designated to be the presiding official by the Administrator. During the proceedings described below, the presiding official will possess the full authority of the Administrator. The presiding official must be of higher rank than the official who issued the initial verification analysis under review. This tiered approach ensures a robust administrative review process, and is consistent with WHD's process for reviewing its investigative findings under several other existing statutory enforcement regimes. Under subsection 810.700(c), the presiding official has the discretion to refer disputed questions of fact to the Chief Administrative Law Judge for a recommended decision. The Chief Judge must then designate an Administrative Law Judge to hear the disputed questions under the Department's rules of practice and procedure at 29 CFR part 18. The Administrative Law Judge must issue a recommended decision within 120 days of when the Administrator referred the questions of fact to the Chief Administrative Law Judge, or longer with consent of the parties. Ultimately, the Administrative Law Judge will issue a recommended decision to the presiding official on the referred question(s), which the presiding official has the discretion to accept or reject in whole or in part. Relatedly, under § 810.700(d), the presiding official has discretion to consider any evidence he or she deems relevant to rendering a determination and may request additional information from the protestor or additional verification from WHD.

Subsections 810.700(c) and (d) are intended to provide the Administrator with the flexibility and additional resources needed for ruling on the difficult factual questions that administrative reviews may present. This approach is similar to a process the Department may use when enforcing section 14(c) of the FLSA (which concerns payment of subminimum wages to workers with disabilities), and will help ensure that issues raised by producers are fully and properly considered. This thorough review will also promote efficiency by increasing the likelihood of satisfactorily resolving a protest at the administrative level, thereby decreasing the need for review before the Court of International Trade. The presiding official retains sole discretion to determine whether to refer factual questions to an administrative law judge, request additional verification by WHD, or to take both or neither of these steps. Factors that may influence the presiding official's decision may include, for example, the complexity of the factual issues presented or whether the protest raises issues or factual questions that did not arise during the initial verification.

Under subsection 810.700(e), the Administrator will strive to issue a decision within one year from the date the Administrator receives notice of the protest from CBP, not including any time during which additional verification or collection of information is taking place. While there is no adverse consequence to the Department for failing to meet this goal, *see, e.g., Hitachi Home Electronics (America), Inc.* v. *U.S.,* 661 F.3d 1343 (Fed. Cir. 2011) (holding that Tariff Act did not provide a consequence for agency's failure to meet statutory deadline for government action), this timeframe comports with CBP's regulations, which state that CBP will review and act on a protest filed in accordance with 19 U.S.C. 1514 within two years from the date the protest was filed. *See* 19 CFR 174.21(a).

Under § 810.700(f), and consistent with 19 U.S.C. 4532(e)(6)(A)(ii), the Administrator will provide a copy of the Administrator's decision to CBP before the end of that time period.

*Subpart I—Whistleblower Protections*

Section 810.800 Prohibited Acts

Subpart I outlines anti-retaliation provisions provided for whistleblowers pursuant to 19 U.S.C. 4532(e)(5), which explicitly protects any person from retaliation for providing information relating to, or otherwise cooperating or seeking to cooperate with, a verification

of the LVC requirements, including a verification under subpart F. The Act provides that it is unlawful to ''intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against any person'' for such cooperation. 19 U.S.C. 4532(e)(5)(A). These protections are applicable to any person who engages in the protected activities, regardless of the person's employment status. Such protections are integral to effective verification of producers' compliance with the high-wage components of the LVC requirements, as verification of the average hourly base wage rate is dependent upon receiving accurate information from workers and others that they may not be willing to provide in the absence of such protections.

The Act authorizes the Secretary to ''take such actions under existing law, including imposing appropriate penalties and seeking appropriate injunctive relief, as may be necessary to ensure compliance with this subsection and as provided for in existing regulations.'' 19 U.S.C. 4532(e)(5)(B). Accordingly, the enforcement processes described in this section, including the filing of complaints, investigations, issuance of determinations, and the administrative review process, are modeled upon the Department's existing whistleblower and anti-retaliation protections, primarily the Department's regulations relating to the temporary employment in the United States of nonimmigrants under H–1B visas. The H–1B regulations provide an appropriate model of ''existing law'' to follow, in part because the statutory language relating to whistleblower protections under the H–1B program, as set forth in section 212(n)(2)(C)(iv) of the Immigration and Nationality Act, is very similar to the whistleblower protection language in the USMCA Implementation Act. *See* 8 U.S.C. 1182(n)(2)(C)(iv). Moreover, as the H–1B program whistleblower protections essentially codified Department whistleblower regulations at the time, the H–1B statute and regulations are particularly appropriate to use as a basis to ensure that the regulations for enforcement of the USMCA whistleblower protections are consistent with existing whistleblower regulations. *See* 144 Cong. Rec. S12752 (Oct. 21, 1998).

Subsection 810.800(b) of this subpart establishes the procedure for filing complaints and is modeled after the H–1B program's complaint process as set forth in 20 CFR 655.806. A complaint must be filed within 12 months after the alleged discriminatory act occurs, with the date of filing being the date of the postmark, facsimile transmittal, phone call, email communication, or, where a complaint is made in person, the date upon which the complaint is received. No particular form or method of complaint is required, so long as the complaint provides sufficient facts for the Administrator to determine whether there is reasonable cause to believe that a violation has occurred and an investigation is warranted. Where the Administrator determines that an investigation is warranted, the complaint shall be accepted for filing and an investigation shall be conducted. After the investigation, a written determination will be issued within 30 calendar days of the date on which the complaint was filed, unless both the complainant and the subject of the investigation agree that additional time is warranted, or if, for reasons outside of the control of the Administrator, the Administrator needs additional time to obtain information from either party or other sources to determine whether a violation has occurred. Such reasons may include, for example, delays in receiving requested information from either the complainant or the subject of the investigation, difficulty scheduling interviews in the course of the investigation, or impediments in obtaining other information necessary to the investigation.

Subsection 810.800(c) explains the contents of a determination by the Administrator at the conclusion of an investigation. This subsection provides that the Administrator's determination, which is served on all interested parties and a copy of which is provided to the Chief Administrative Law Judge, will describe the Administrator's findings and the reason(s) for the Administrator's determination. Where the Administrator has determined that a violation has occurred, the determination will prescribe any appropriate remedies, including monetary relief, injunctive relief, civil money penalties of up to $50,000 per violation, and/or any other remedies assessed. Such remedies may include equitable relief, such as employment, reinstatement, promotion, compensation for any monetary loss incurred by the complainant as the result of the violation, or any other relief necessary to make the complainant whole. These remedies are consistent with the statutory language authorizing the Department to impose appropriate penalties and seek appropriate injunctive relief as may be necessary to ensure compliance with the whistleblower provisions, *see* 19 U.S.C. 4532(e)(5)(B), and are also consistent with existing whistleblower statutes and regulations. *See, e.g.,* 20 CFR 655.810. For example, the regulation provides that the Administrator has the authority to impose civil money penalties of up to $50,000 per violation of this section. This interpretation of ''penalties'' as used in the statute is consistent with the Department's interpretation of ''penalties'' as used in other statutes the Department enforces. *See, e.g.,* 8 U.S.C. 1188(g)(2); 29 CFR 501.19. Additionally, the maximum penalty amount is appropriate to ensure compliance with these prohibitions on retaliation given the size of the firms that will be certifying under the USMCA and the centrality of these whistleblower provisions to the verification of the LVC provisions. The Administrator's determination will also inform the interested parties of their right to request a hearing, and that if a hearing is not requested within 15 days of the date of the determination, that determination becomes final.

Subsection 810.800(d) explains the procedures for administrative review of the Administrator's determination, which are consistent with standard Department administrative review procedures. Any party desiring review of a determination of the Administrator may request an administrative hearing by writing to the Chief Administrative Law Judge, who must receive the request no later than 15 calendar days from the date of the determination for it to be considered timely. Once a request for a hearing is timely filed, the Administrator's determination is inoperative unless and until the case is dismissed or an administrative law judge issues an order affirming the determination of the Administrator. All hearings shall be conducted in accordance with the standard procedures for administrative law judge hearings in 29 CFR part 18. The administrative law judge will issue a decision within 60 days after the date of the hearing, and if any party desires review of the decision, the party must file a timely petition for review with the Administrative Review Board.

Subsection 810.800(e) details the process by which a party may appeal a decision of the administrative law judge, and is consistent with standard Department procedure for appeals to the Administrative Review Board. A party may appeal a decision of the administrative law judge by filing a petition for review with the Administrative Review Board within 30 days of the date of the administrative law judge's decision. If a petition for review is filed with the Administrative Review Board, the decision of the administrative law judge becomes

inoperative unless and until the Administrative Review Board issues an order affirming the administrative law judge's decision, or unless and until 30 calendar days have passed after the Administrative Review Board received the petition for review and the Administrative Review Board has not notified the parties that it will review the administrative law judge's decision.

Subsection 810.800(f) provides that an order of the Administrative Review Board is subject to discretionary review by the Secretary of Labor. *See* Secretary of Labor's Order 01–2020 (Feb. 21, 2020), 85 FR 13186 (Mar. 6, 2020); *see also* Discretionary Review by the Secretary Direct Final Rule, 85 FR 13024–01 (Mar. 6, 2020). Secretary's Order 01–2020, *inter alia,* delegates to the Administrative Review Board authority and assigns responsibility to act for the Secretary of Labor in review or on appeal of ''any laws or regulations. . .enacted or promulgated [after the date of the Order] that provide for final decisions by the Secretary of Labor upon appeal,'' which encompasses these regulations. The Order further provides for Secretarial review of Administrative Review Board decisions regarding any of the covered laws or regulations. As the Order applies to decisions of the Administrative Review Board regarding these regulations, the procedures outlined in the Order apply to Secretarial review of Administrative Review Board decisions under this subpart, including the processes for referral of cases to the Secretary for review, review of cases by the Secretary, and the finality of Secretarial review.

## IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The Department is seeking emergency approval related to the collection of information described herein. Persons are not required to respond to the information collection requirements until OMB approves them under the PRA. This IFR creates a new information collection specific to recordkeeping requirements necessary to verify compliance with the high-wage components of the LVC requirements under the USMCA and the Act. The Department has created a new information collection request and submitted the request to OMB for approval under OMB control number 1235–0NEW (''High-wage components of Labor Value Content requirements under the USMCA'') for this action.

*Summary:* The Act implements the USMCA. Section 202A of the Act, codified at 19 U.S.C. 4532, in part implements Article 7 of the Automotive Appendix of the USMCA. The USMCA establishes LVC requirements for passenger vehicles, light trucks, and heavy trucks, pursuant to which an importer can only obtain preferential tariff treatment for a covered vehicle if the covered vehicle meets certain high-wage component requirements. The Act requires importers who claim preferential tariff treatment under the USMCA for goods imported into the United States from a USMCA Country, and vehicle producers whose goods are the subject of a claim for preferential tariff treatment under the USMCA, to make, keep, and, pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection records and supporting documents related to the LVC requirements. *See* 19 U.S.C. 1508(b)(4). The Act further grants the Secretary authority during the course of a verification to request any records relating to wages, hours, job responsibilities, or any other information in any plant or facility relied on by a producer of covered vehicles to demonstrate that the production of those vehicles meets the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(B).

*Purpose and Use:* This information collection requires certain data to be maintained and/or produced upon request. WHD staff will use the records provided by the producer upon request to verify producer compliance with the high-wage components of the LVC requirements, as set forth in the USMCA and the Act.

*Technology:* The regulations prescribe no particular order or form of records, and a producer may preserve records in forms of their choosing, provided that the producer can produce the specified records upon request and the producer's facilities are available for inspection and transcription of the records.

*Minimizing Small Entity Burden:* Although the recordkeeping requirements may involve small businesses, the Department minimizes respondent burden by requiring no specific order or form of records in responding to this information collection.

*Public Comments:* The Department is requesting emergency processing of this collection. As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and money) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department seeks public comments regarding the burdens imposed by this IFR. Commenters may send their views about this information collection to the Department in the same manner as all other comments (*e.g.,* through the *regulations.gov* website). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Any comments received specific to the information collection during the IFR comment period will be combined and submitted to OMB with comments received during the subsequent public notice and comment period that the Department will provide (in a notice in the **Federal Register**) to invite comments on the information collection requirements established through this IFR.

The Department has submitted the new information collection under 1235–0NEW. Interested parties may receive a copy of the full supporting statement by sending a written request to the mailing address shown in the **ADDRESSES** section at the beginning of this preamble. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications may also be addressed to OMB. Comments to OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* OMB will consider all written comments that the agency receives. Commenters are encouraged, but not required, to send the Department a courtesy copy of any comments sent to OMB. The courtesy

copy may be sent in the same manner as other comments directed to the Department.

The Department is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Comment on ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Comment on ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Total annual burden estimates, which reflect the new responses for the recordkeeping information collection, are summarized as follows:

*Type of Review:* Approval of a new collection.

*Agency:* Wage and Hour Division, Department of Labor.

*Title:* High-Wage Components of the Labor Value Content Requirements under the USMCA.

*OMB Control Number:* 1235–0NEW.

*Affected Public:* Private Sector: businesses or other for-profits, farms, and not-for-profit institutions.

*Estimated Number of Respondents:* 9,455.

*Estimated Number of Responses:* 5,796,460.

*Estimated Burden Hours:* 205,911 hours.

*Estimated Time per Response:* Various.

*Frequency:* Various.

## V. Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improved Regulation and Regulatory Review

### *A. Introduction to Executive Orders*

Under Executive Order 12866, OIRA determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[8] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Department has conducted a Regulatory Impact Analysis (RIA) to demonstrate this IFR's potential effects. The Department includes this analysis notwithstanding that this rule falls under 5 U.S.C. 553(a)(1).

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected the approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

### *B. Overview of Analysis*

This RIA discusses the costs, benefits, and transfers associated with the IFR. The baseline for this analysis is current production, prices, and trade under NAFTA. These impacts are limited to producers that import covered vehicles into the United States and parts manufacturers in America supplying parts to Canadian and Mexican producers for use in vehicles imported to the United States. They do not include, for example, the costs for U.S. vehicle exporters to comply with Mexican and Canadian USMCA regulations, which are outside the scope of this IFR. Where possible, the impacts are limited to the LVC requirement and exclude other changes from NAFTA to the USMCA.

The Department quantified two direct costs to businesses: (1) Regulatory familiarization costs and (2) recordkeeping costs. Annualizing over 10 years these costs are estimated to be $6.1 million per year at both a 3 percent and 7 percent discount rate. Producer adjustment costs, consumer costs, and Departmental costs are discussed qualitatively.

The Department estimated there are 6,140 establishments in the United States potentially impacted by this rulemaking. There may be transfers from employers to employees in some of these establishments if companies increase employee pay to meet the LVC requirements.[9] The Department does not have the data necessary to estimate the magnitude of these transfers; however, the Department expects these to be small because the majority of U.S. workers presently performing direct production work in the affected industries already earn more than the required average of US$16 per hour. Another potential impact of the rule is shifting jobs from Mexico to the United States (and Canada), and a corresponding increase in the wages associated with those jobs.

The Department also discusses benefits and other intended effects qualitatively due to data limitations. These effects include new capital investments, increased U.S. automotive parts purchases, and increased employment.

The costs and benefits draw on the existing literature. These papers are referenced throughout this analysis and are summarized in Table 1.

[8] 58 FR 51735 (Oct. 4, 1993).

[9] The Department uses the terms ''employee'' and ''worker'' interchangeably in this section.

TABLE 1—SUMMARY OF REPORTS ON THE EFFECTS OF THE USMCA

| Report | Method | Main findings |
|---|---|---|
| Burfisher et al | —Used a global, multisector, computable-general-equilibrium model to provide an analytic assessment of five key provisions of the USMCA.<br>—Examined the effect of the removal of U.S. tariffs on steel and aluminum imports from Canada and Mexico. | —Estimated aggregate effects of USMCA were relatively small.<br>—Reduction in trade among the three North American partners but a combined net welfare gain.<br>—Reductions in trade costs and border inefficiencies.<br>—Decline in automotive production in U.S., Canada, and Mexico.<br>—Aggregate wages are unaffected in Canada and the U.S. |
| Center for Automotive Research (CAR). | —Projected impacts on the U.S. new vehicle market and broader economy based on ten scenarios of policy combinations in Section 232 tariffs, USMCA, and Section 301 tariffs.<br>—Data on current vehicle models produced and sold in North America not meeting USMCA ROO requirements. | —In all scenarios, estimated increases in new vehicle prices and decreases in new light-duty vehicle sales, U.S. GDP, and vehicle dealership employment.<br>—Majority of the economic harm is due to Section 232 tariffs.<br>—USMCA leads to a slight average increase in the U.S. consumer prices of vehicles assembled in Canada or Mexico |
| Office of the U.S. Trade Representative (USTR). | —Short-term quantitative impact of the USMCA's automotive ROO.<br>—Data compiled from vehicle producers' compliance plans and public announcements from automobile companies. | —Estimated that over five years:<br>—$34 billion in new automotive investments.<br>—$23 billion in new annual auto parts purchases.<br>—76,000 new automotive jobs. |
| Reinsch et al | —Examined the North American automobile industry and rules of origin to make broad conclusions about the impact on global supply chains. | —May result in higher vehicle prices or fewer vehicle options.<br>—Costs due to USMCA's ROO are miniscule compared to those from proposed Section 232 tariffs.<br>—Increase production in U.S. parts suppliers and automobile industries.<br>—Increase investment in the North American automotive supply chain. |
| U.S. International Trade Commission (USITC). | —Assessment of the likely impact of the USMCA on the U.S. economy and specific industry sectors. | —Increase in GDP of $68.2 billion.<br>—Increase of 176,000 jobs.<br>—Increases in U.S. exports to Canada and Mexico of $19.1 and $14.2 billion, respectively.<br>—Manufacturing industries experience the largest percentage gains in output, exports, wages, and employment. |

*C. Industry Profile*

The Department estimated that in the United States there are 4,999 firms and 6,140 establishments potentially affected by this rulemaking (Table 2).[10] However, some of these firms and establishments will be only indirectly affected. Firm and establishment data are from the U.S. Census Bureau's 2017 Statistics of U.S. Businesses (SUSB).[11] The Department believes that most affected companies will be in the North American Industry Classification System (NAICS) industries motor vehicle manufacturing (NAICS 3361), motor vehicle body manufacturing (NAICS 336211), motor vehicle parts manufacturing (NAICS 3363), and tire manufacturing (except retreading) (NAICS 326211). In this analysis, we refer to NAICS 336211, 3363, and 326211 collectively as ''parts manufacturing.''

Among motor vehicle manufacturing firms, predominately affected companies are those with final assembly operations in Mexico or Canada, and that import covered vehicles (*i.e.,* a passenger vehicle, light truck, or heavy truck) into the United States. In 2016, there were 17.5 million new vehicles sold in the United States. Of these, 9.8 million were made in the United States and almost 2 million were made in Mexico.[12] Importers include Fiat Chrysler, Ford, General Motors, Honda, Nissan, Toyota, Volkswagen, and more.[13] The motor vehicle manufacturing NAICS also includes companies that are engaged in the vehicle manufacturing process but do not produce and sell covered vehicles, who may not be materially affected by this rulemaking. Because the Department is unable to determine exactly which companies may not be affected, all companies in this industry have been included in this analysis.

Among U.S. parts manufacturers, those predominately affected are companies who export parts to Mexico or Canada for use in vehicles imported

[10] An establishment is commonly understood as a single economic unit, such as a farm, a mine, a factory, or a store, that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity for which a single industrial classification may be applied. An establishment contrasts with a firm, or a company, which is a business and may consist of one or more establishments. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

[11] The 2017 data are the most recently available. *See* U.S. Census Bureau, Statistics of U.S. Businesses (SUSB). *https://www.census.gov/programs-surveys/susb.html.*

[12] The Journal Times. 2018. 10 popular cars that were made in Mexico. *https://journaltimes.com/news/national/10-popular-cars-that-were-made-in-mexico/collection_4e1650e4-ae47-505e-b4ce-d2191781a990.html#2.* Note that this data may include vehicles that were produced or assembled in Mexico, and thus these figures may not reflect only final assembly operations.

[13] *Car and Driver. 2019.* Every New Car That May Jump in Price from U.S. Tariffs on Mexican Imports. *https://www.caranddriver.com/news/a27702580/car-prices-us-tariffs-mexican-imports/.*

into the United States. The Department does not have information on how many of the 4,723 parts manufacturers in the United States do so. However, exports of parts to Mexico and Canada are widespread. Additionally, even parts manufacturers who do not export to Mexico or Canada may be indirectly impacted if parts production increases in the United States, where wages are generally higher, to meet the LVC requirements (*see* section V.F.). Some motor vehicle parts manufacturers may not be producing parts for covered vehicles (*e.g.,* parts for vehicle repairs), but the Department does not have data on the number of these firms.

Other industries also may be affected but are not included in this profile. First, some entities in the transportation industry (NAICS 48) may also be affected due to the provision allowing producers to claim high-wage transportation or related costs in their calculation of high-wage material and manufacturing expenditures. Second, some entities that produce automotive advanced batteries in the storage battery manufacturing industry (NAICS 335911) may be affected due to the high-wage assembly expenditures credit. This NAICS includes 11 components, one of which is automobile storage battery manufacturing. In 2017, this detailed industry included only 123 firms and 164 establishments.[14] Third, some entities in the research and development (R&D) or information technology (IT) industries may be impacted by the high-wage technology expenditure credit if the work is contracted out.[15] Because the number of these entities in these industries is expected to be a small percentage of all firms in these industries, the Department has not included these entities in the industry profile.[16]

TABLE 2—IMPACTED INDUSTRIES

| Industry | Firms | Establishments | Employees [a] | Annual payroll (billions $2019) | Annual receipts (billions $2019) |
|---|---|---|---|---|---|
| Total | 4,999 | 6,140 | 886,061 | $54.0 | $650.8 |
| 3361: Motor vehicle manuf | 276 | 328 | 208,364 | 16.8 | 348.0 |
| *336111: Automobile manuf* | *162* | *175* | *82,780* | *7.2* | *119.0* |
| *336112: Light truck & utility vehicle* | *49* | *66* | *99,097* | *7.9* | *201.6* |
| *336120: Heavy duty truck manuf* | *74* | *87* | *26,487* | *1.8* | *27.4* |
| Parts and manufacturing | 4,723 | 5,812 | 677,697 | 37.2 | 302.8 |
| *336211: Motor vehicle body manuf.* | *632* | *733* | *47,964* | *2.5* | *15.1* |
| *336300: Motor vehicle parts manuf.* | *4,010* | *4,965* | *584,224* | *31.9* | *269.5* |
| *326211: Tire manuf. (except retreading)* | *81* | *114* | *45,509* | *2.8* | *18.2* |

Source: SUSB 2017.
[a] Employees on payroll in the pay period including March 12. Includes employees on paid sick leave, holidays, and vacations.

The volume of trade in vehicles and parts between the United States, Mexico, and Canada is substantial. According to the International Trade Administration, the United States exported $29.5 billion in new automobiles and trucks to Canada and $3.3 billion to Mexico in 2019 (56 percent of total U.S. vehicle exports) (Figure 1). The United States also exported $62.1 billion in parts to these two countries (73 percent of all U.S. automotive parts exports). The United States imported $191.0 billion in new vehicles and parts from Canada and Mexico in 2019. Combined, the United States, Canada, and Mexico produced 18 percent of passenger cars and commercial vehicles globally in 2018.[17]

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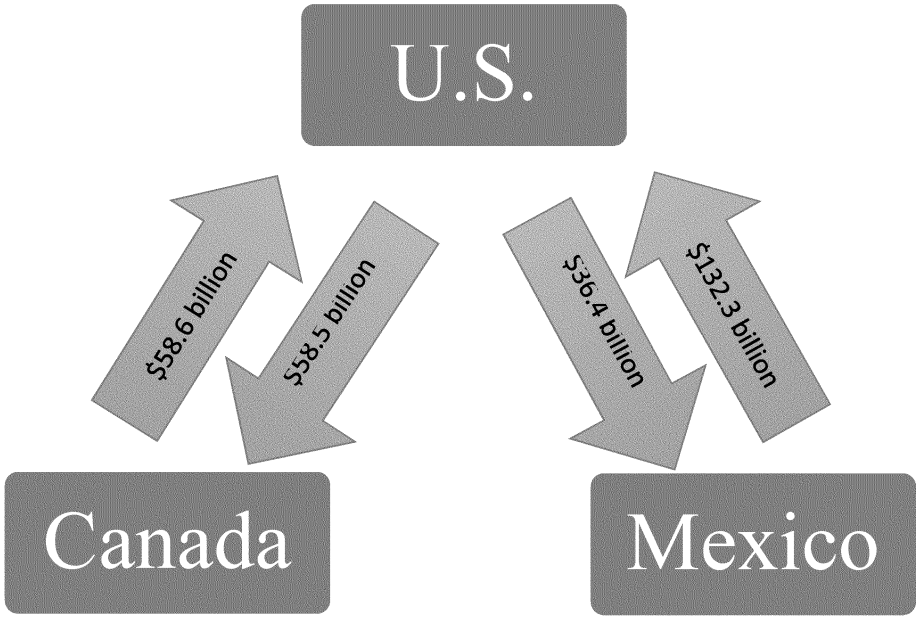
[14] SUSB 2017.

[15] If the R&D or IT work is performed by the automotive producer, these entities are already captured in the industry profile. Only outsourced R&D and IT would result in additional entities being impacted.

[16] Additionally, to receive the high-wage assembly expenditures credit a producer needs to demonstrate only that a battery, transmission, *or* engine assembly plant meets the high-wage requirement. Because all transmission and engine plants are included in this industry profile, any associated costs at battery plants may just offset costs already attributed to engine or transmission plants.

[17] Bureau of Transportation Statistics. 2020. Table 1–23: World Motor Vehicle Production, Selected Countries (Thousands of vehicles). *https://www.bts.gov/content/world-motor-vehicle-production-selected-countries.*

Figure 1: Value of Exports and Imports of New Vehicles and Parts, 2019




Source: International Trade Administration. 2020. Motor Vehicle Trade Data. https://legacy.trade.gov/td/otm/autostats.asp.

Note: FAS value (free alongside ship).

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*D. Costs*

The Department quantified two direct costs to businesses: (1) Regulatory familiarization costs and (2) recordkeeping costs. Annualizing over 10 years, these costs are estimated to be $6.1 million per year at both a 3 percent and 7 percent discount rate (Table 3). Other potential costs are discussed qualitatively. These include additional costs to manufacturers (setup costs and pay adjustment costs), consumer costs (increase in vehicle prices due to costs more immediately borne by foreign manufacturers, decrease in vehicle options), and Departmental costs (setup and enforcement costs to DOL).

TABLE 3—OVERVIEW OF COSTS ($2019)

| | Costs ($1,000s) | | |
|---|---|---|---|
| | Regulatory familiarization | Recordkeeping | Total |
| **Individual Years** | | | |
| Year 1 | $481.9 | $6,060.4 | $6,542 |
| Subsequent years | 0 | 6,060.4 | 6,060 |
| **10-Year Annualized Costs** | | | |
| 3% real discount rate | 56.5 | 6,060.4 | 6,117 |
| 7% real discount rate | 8.6 | 6,060.4 | 6,129 |

In addition to calculating aggregate costs, the Department also considers how the IFR would impact individual firms. The following numbers use Year 1 costs because costs will be largest in that year. For motor vehicle manufacturers, where 276 firms incur aggregate first year costs of $367,000, each firm would incur an average cost of $1,300. For parts manufacturers, where 4,723 firms incur aggregate first year costs of $6.2 million, the average cost per firm would be $1,308. If parts suppliers' costs for recordkeeping are fully passed on to motor vehicle manufacturers, and all costs are thus ultimately borne by motor vehicle manufacturers, and all manufacturers import affected vehicles into the United States, then the aggregate costs of $6.5 million are incurred by 276 firms, for an average of $23,700 per firm.

Considered in relation to receipts, costs per firm are negligible, amounting to less than 0.002 percent of receipts when costs are passed along to vehicle manufacturing firms. Total costs per vehicle imported into the United States from Mexico or Canada are $1.42 per vehicle ($6.5 million divided by 4.6 million vehicles).[18]

[18] Imports of New Passenger Vehicles, Light Trucks, Medium Trucks, and Heavy Duty Trucks in 2019. Source: International Trade Administration.

Continued

i. Regulatory Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses for time spent reviewing the new regulation. To estimate the total regulatory familiarization costs, the Department used (1) the number of firms in the affected industries; (2) the number of estimated hours that each firm will spend reviewing the rule; and (3) the wage rate for the staff reviewing the rule. The Department applied different time estimates based on the type of manufacturing.

First, to estimate the number of firms in the affected industries, the Department used the 2017 SUSB to estimate that there are 276 firms in the motor vehicle manufacturing industry and 4,723 in the parts manufacturing industries. As discussed in section V.C., the Department believes that (1) most of the affected firms will be in these industries and (2) some of these firms may be only marginally affected if the vehicles, or parts manufactured for use in these vehicles, are not imported from Mexico or Canada. However, the Department includes all firms in these industries in calculating regulatory familiarization costs. The Department believes regulatory familiarization costs will occur at the firm level rather than the establishment level because importing decisions and processes happen at a centralized level.

Second, to estimate the number of hours each firm will spend reviewing the rule, the Department used two estimates that vary by industry. For firms in the motor vehicle manufacturing industry, the Department assumes that it will take, on average, 2.5 hours for each firm to review the rule. For parts manufacturers, the Department estimates that it will require, on average, 1.5 hours per firm. The first category of firms import vehicles and must perform the LVC calculations and apply for certification, thus necessitating more time to understand the rule's requirements. The parts manufacturers, on the other hand, will need only to become familiar enough with the rule to understand the type of wage data required to be kept.

Third, the Department assumes that a business operations specialist (SOC 13–1000) (or a staff member in a similar position) will review the rule.[19] According to the Bureau of Labor Statistics' (BLS) Occupational Employment Statistics (OES), these workers in the transportation equipment manufacturing industry (NAICS 336) had a median wage of $38.03 per hour in 2019. Assuming benefits are paid at a rate of 46 percent[20] of the base wage, and overhead costs are 17 percent[21] of the base wage, the reviewer's loaded hourly rate is $61.99.

To derive the aggregate regulatory familiarization costs, the number of affected firms is multiplied by the number of hours per firm and the wage rate. In Year 1, regulatory familiarization costs are estimated to be $481,900 ([276 × 2.5 × $61.99] + ([4,723 × 1.5 × $61.99]). Regulatory familiarization costs in future years are assumed to be *de minimis.* This amounts to a 10-year annualized cost of $56,500 at a discount rate of 3 percent or $68,600 at a 7 percent rate.

ii. Recordkeeping Costs

In order to qualify for preferential tariff treatment, producers must demonstrate that they meet the high-wage components of the LVC requirements. This may require companies to keep additional records, request records from parts producers, perform the high-wage calculations, submit certification information, and respond to any DOL or CBP inquiries. Recordkeeping costs are quantified here, and comments are requested regarding the extent to which certification costs (*e.g.,* time spent filling out and submitting certifications forms) are attributable to this rule or to forthcoming CBP regulations (because CBP is the agency receiving producer certifications). One-time costs to adjust payroll or implement new recordkeeping systems are discussed qualitatively in section V.D.iii.

In its estimate of recordkeeping costs, the Department has included all establishments in affected industries in the calculation, even though some establishments may not be engaged in imports from Mexico or Canada. The Department also believes that once the systems are in place and establishments have been trained on the necessary requirements, the ongoing recordkeeping costs will be minimal. Although establishments will need to track employees' hours worked in direct production and the hours worked not in direct production, the Department does not believe that this additional burden will be substantial. Many firms use sophisticated payroll software to track workers' wages and hours, and many manufacturing employees likely already clock in and out for their hours worked. Therefore, compiling these values for the LVC computation should be relatively straightforward. The Department estimates that additional recordkeeping will require 1 hour of recordkeeping per establishment every two weeks (assuming a pay period is two weeks), for a total of 26 hours per year. The same time estimate is used for both motor vehicle manufacturers and parts manufacturers.[22] Small parts manufacturers may not have similarly advanced payroll software, and thus recordkeeping may be more onerous, but these small establishments also have fewer employees' data to track. Thus, the Department has chosen to use the same time estimate for all establishments.

The Department believes a payroll and timekeeping clerk (SOC 43–3051), or similar worker, would be responsible for this work.[23] Payroll and timekeeping clerks in the transportation equipment manufacturing industry earn a loaded hourly wage rate of $37.96 ($23.29 × 1.46 × 1.17). Multiplying the number of affected establishments (328 motor vehicle manufacturers plus 5,812 parts manufacturers) by the number of hours per establishment per year (26) by the loaded hourly wage rate ($37.96) yields a total annual recordkeeping cost of $6.1 million ($0.3 million for motor vehicle manufacturers and $5.7 million for parts manufacturers).

iii. Producer Adjustment Costs

Firms may incur three types of one-time adjustment costs: Those to implement new systems; those to adjust employee pay; and those to adjust their supply chain. These costs may differ between vehicle manufacturers and parts manufacturers. They will also differ between firms meeting the LVC requirements and those that do not. The Department has not quantified these costs due to lack of data. For example, the Department does not have data showing how many firms will incur few adjustment costs because they already meet the LVC requirements. For those not meeting the LVC requirements, the

2020. Motor Vehicle Trade Data. *https://legacy.trade.gov/td/otm/autostats.asp.*

[19] Occupational Employment Statistics (OES). 2019. 13–1000 Business Operations Specialists. *https://www.bls.gov/oes/current/oes_stru.htm#13-0000.*

[20] Bureau of Labor Statistics (BLS). 2020. Employer Costs for Employee Compensation—December 2019. *https://www.bls.gov/news.release/pdf/ecec.pdf.*

[21] Rice, C. 2002. Wage Rates for Economic Analysis of the Toxics Release Inventory Program. *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2003-0006-0067.*

[22] Most assembly plants used in the high-wage assembly expenditure credit are included in the affected entities counts and costs, but R&D and IT firms are not included. However, these additional companies would be affected only if the automobile producers contract out for R&D or IT services.

[23] OES. 2019. 43–3051 Payroll and Timekeeping Clerks. *https://www.bls.gov/oes/current/oes433051.htm.*

Department does not have data showing whether (and how) firms will adjust pay, contract with new suppliers, or forego the preferential tariff treatment. The Department requests comments on the time and expense required for these adjustments.

In general, the Department believes the average annualized adjustment cost per firm will be small. The Department believes most producers in the United States either already meet the LVC requirements or would be able to with minor adjustments. Additionally, these are predominately one-time costs. However, for firms not meeting the LVC requirements, these costs may be more substantial.

Producers generally use advanced payroll and inventory software and already track production workers' hours and wages. Therefore, setting up systems to compile internal wage and hour data is expected to be straightforward. However, producers also may need to coordinate with and request wage data from parts suppliers, assembly plants used to obtain the high-wage assembly expenditures credit, and entities used to obtain the high-wage technology expenditures credit. According to the United States International Trade Commission (USITC), a ''single vehicle manufacturer can have hundreds of suppliers providing thousands of parts for a single vehicle.'' [24] Even a small amount of time spent per supplier could result in a sizable amount of time when aggregated.[25] However, vehicle producers only need to request data from enough suppliers to meet the high-wage components of the LVC requirements. If these requirements can be met using wages paid by companies owned by the vehicle producer, no records from outside parts manufacturers would be necessary.

Parts manufacturers, which tend to be smaller, may not have as advanced payroll software and thus may require more adjustments to their systems to track wages and hours. According to USITC, ''[m]any parts manufacturers do not have the compliance staff necessary to demonstrate to manufacturers that they meet RVC [regional value content] or LVC requirements and will need to hire staff and develop new compliance processes.'' However, as USITC noted, industry and government are working to minimize these costs by standardizing the certification process.[26] Additionally, the smallest companies, which would be the least likely to have systems in place, would also likely have small contributions to meeting the LVC requirements, and thus their data may not be necessary.

Pay adjustment costs would occur if a firm either increases base pay or adjusts pay components (*e.g.,* a shift from benefits to base pay) to meet the LVC requirements. This would include time to assess whether increasing pay is preferable to paying the higher tariff rates, determine which employees' pay rates to adjust, and enact these changes. The Department believes that pay adjustment costs would be small because U.S. vehicle manufacturing firms are generally able to meet the LVC requirements without adjusting pay at their U.S. plants (*see* section V.E.).

If vehicle producers do not meet the LVC requirements, they may begin purchasing parts from higher-wage suppliers.[27] These supply chain adjustments involve multiple costs. Producers would have to identify which suppliers to change, negotiate new contracts, and validate the new parts. The Department believes that supply-chain adjustments would predominately occur for high-cost parts, which would have a larger impact on the LVC calculation. Alternatively, producers may move R&D or IT services to North America to qualify for the high-wage technology credit. Additional information on impacts to the supply chain are provided in Reinsch et al., (2019).[28]

iv. Increase in Vehicle Prices

Vehicle prices for U.S. consumers may increase as a result of the high-wage components of the LVC requirements. The Department has identified five channels through which prices may increase. Which increases, if any, actually occur will depend on the manufacturers' cost-minimizing responses.

1. U.S. manufacturers increase pay to meet the high-wage component (although this impact would be experienced as a cost by consumers, it is categorized as a transfer under Circular A–4; as explained in section V.E., on rule-induced transfers, the Department believes this will be uncommon).

2. Mexican manufacturers increase pay to meet the high-wage component.

3. Production is shifted from the lower-wage Mexican market to the higher-wage U.S. or Canadian markets, due to a reduction in Mexico's competitive advantage (*see* section V.F.).

4. R&D or IT is moved from lower-wage labor markets overseas to North America (resulting in cost increases) to qualify for the high-wage technology expenditures credits.

5. Higher tariffs on Mexican or Canadian imports to the United States result in higher prices for U.S. consumers (although the amounts collected as tariffs would be experienced as costs by consumers, under Circular A–4, they would be categorized as a transfer to the federal government; accompanying deadweight loss is a cost, with consumer welfare reductions discussed below).[29]

Researchers have generally predicted small impacts of the USMCA on vehicle prices. The aggregate effect is small because many vehicle models meet the LVC requirements (and will have few new costs) or do not qualify under the current NAFTA requirements (and will likely not be impacted by these changes). The literature has generally not disaggregated the impact of the high-wage components of the LVC requirements from other parts of USMCA's vehicle rules of origin (ROO) requirements. The following studies discuss the potential impact on consumer prices:

[24] United States International Trade Commission (USITC). 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[25] For a somewhat analogous example, please see *https://www.regulations.gov/document?D=FAR-2014-0025-0933.*

[26] *Id.*

[27] Even if prices at these higher-wage parts facilities are higher, this may still be a cost-minimizing solution if using such suppliers qualifies the producer for preferential tariff treatment.

[28] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

[29] The most-favored-nation (MFN) tariff rates would apply. These are 2.5 percent for passenger vehicles and 25 percent for cargo vehicles, including light-duty pickup trucks and vans.

• The Office of the United States Trade Representative (USTR) wrote that ''automakers and parts manufacturers have indicated to USTR that the USMCA's rules will not [. . .] significantly affect consumer vehicle prices.'' [30]

• The Center for Automotive Research (CAR) expects the change in price for U.S. vehicle imports to be ''relatively small.'' [31]

• The USITC estimated ''prices for all vehicles would undergo a modest increase (ranging from 0.37 percent for pickup trucks to 1.61 percent for small cars).'' [32]

• Burfisher et al. (2019) contend that the new automotive rules of origin would lead to higher vehicle prices.[33] They estimated that the LVC requirements would result in a welfare loss to Americans of $380 million. This loss is attributed to the increased prices of the vehicles and parts imported from Canada and Mexico.

CAR considered specifically the impact that tariffs would have on prices paid by U.S. consumers. They estimated 24 vehicle models produced in Canada and Mexico that meet the current NAFTA requirements would not meet the new USMCA ROO requirements (considering both the LVC and the RVC requirements). The average potential tariff for these 24 vehicle models is estimated to be $635.[34] CAR notes that these 24 vehicles fail multiple criteria of the USMCA ROO. Thus, producers are unlikely to make the necessary changes to obtain the preferential tariff. Because these tariff costs are on a small subset of models, the average impact on vehicle prices will be small. Additionally, these tariffs may result in a shift in consumption towards U.S.-manufactured models or models meeting the USMCA requirements.

v. Decrease in Consumer Choice

As explained above, CAR has identified 24 vehicle models produced in Canada and Mexico that meet the current NAFTA requirements but would not meet the new USMCA ROO requirements. Because these vehicles fail multiple criteria of the USMCA ROO, the sale of these vehicles in the United States may cease or significantly decrease. This is demonstrated by the fact that manufacturers have already announced plans to end North American production or U.S. sales of half of these models. This possibility has also been confirmed by an industry representative interview conducted by USITC.[35] To the extent that these discontinued model lines would be the first preference of some consumers, this decrease in consumer choice may result in a decrease in consumer welfare. Additionally, producers may reduce the number of options in order to streamline the production process and offset USMCA compliance costs.[36]

vi. Decrease in Vehicle Sales and Impact on Gross Domestic Product (GDP)

If vehicle prices increase, this may result in fewer new vehicle sales and smaller domestic production. According to USITC, the price increase resulting from the USMCA requirements would lead to an estimated 140,200 fewer cars sold, representing about 1.25 percent of vehicles sold in the United States in 2017.[37] Similarly, it estimates that U.S. passenger vehicle production would decline by 1.31 percent and pickup truck production by 0.07 percent. This may result in a decrease in consumer welfare and a negative impact on GDP. However, the Department believes the increase in domestic parts production may offset any, and will offset some, negative impact on GDP (*see* section V.F.).

If vehicle sales decrease, there may be secondary impacts on vehicle dealerships. However, some of the decrease in new vehicle sales may be offset by an increase in used car sales. And, as noted above, the potential reduction is fairly small as a share of total sales.

vii. Competitiveness of U.S. Produced Vehicles and Exports

If Mexican or Canadian exporters do not meet the high-wage components of the LVC requirements, then they (or their suppliers) must either increase employee compensation or pay the higher non-preferential tariff rates. This would likely increase the cost of these vehicles, and make domestically produced vehicles more competitive. The USMCA's impact on U.S. vehicle exports is outside the scope of this rule because those costs will be incurred largely due to the corresponding Mexican or Canadian regulations. As discussed in section V.F., estimates differ regarding the net effect on U.S. exports of vehicle parts.

viii. Department of Labor Costs

Under this IFR, the Department would evaluate certifications submitted by vehicle producers for omissions or errors, participate in the verification of whether production meets the high-wage components of the LVC requirements, conduct administrative reviews of these verifications if necessary, and review whistleblower complaints. The Department would incur both one-time setup costs and recurring costs. It is unclear how much time would be spent on these tasks or how frequently they will be performed. For example, the Department does not yet know how many certifications it will review, or verifications it will conduct, each year. Accordingly, these costs have not been estimated.

*E. Potential Transfers*

Earnings transfers from automobile and automobile parts manufacturing companies to U.S. employees may occur if wages are raised to meet the high-wage components of the LVC requirements in order to qualify for preferential tariff treatment. The Department has not quantified this potential transfer because (1) it is expected to be small and (2) there are data limitations, such as a lack of wage rates by firm or the labor share of value in production of parts or assembly of cars.

The Department provides some numbers here to demonstrate why transfers in the United States are expected to be small. The Department used the 2019 Current Population Survey (CPS) Outgoing Rotation Group

[30] Office of the United State Trade Representative (USTR). 2019. Estimated Impact of the United States-Mexico-Canada Agreement (USMCA) on the U.S. Automotive Sector. *https://ustr.gov/sites/default/files/files/Press/Releases/USTR%20USMCA%20Autos%20White%20Paper.pdf.*

[31] Center for Automotive Research (CAR). 2019. U.S. Consumer & Economic Impacts of U.S. Automotive Trade Policies. *https://www.cargroup.org/wp-content/uploads/2019/02/US-Consumer-Economic-Impacts-of-US-Automotive-Trade-Policies-.pdf.*

[32] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[33] Burfisher, M. et al., 2019. NAFTA to USMCA: What is Gained? International Monetary Fund Working Paper. *https://www.imf.org/en/Publications/WP/Issues/2019/03/26/NAFTA-to-USMCA-What-is-Gained-46680.*

[34] CAR. 2019. U.S. Consumer & Economic Impacts of U.S. Automotive Trade Policies. *https://www.cargroup.org/wp-content/uploads/2019/02/US-Consumer-Economic-Impacts-of-US-Automotive-Trade-Policies-.pdf.*

[35] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[36] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

[37] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.* (Using a partial equilibrium model with a price elasticity of −1. Using a less price-elastic value of −0.4, the projected decrease in new vehicle sales would be 66,200, *see* Table G.1.)

data to estimate current earnings of employees working in production occupations in the automobile manufacturing industry. The CPS is a monthly survey of about 60,000 households that is jointly sponsored by the U.S. Census Bureau and BLS. The CPS Outgoing Rotation Group is a subset of the CPS sample with more detailed information.

The Department estimated the average hourly rates earned by production workers in the motor vehicle manufacturing industry.[38] About 89 percent of these workers are paid hourly. For hourly workers, their reported regular hourly wage rate, excluding tips, overtime, and commissions was used.[39] For non-hourly workers, the Department calculated an hourly wage rate using usual weekly earnings and usual hours worked per week.[40] If a non-hourly worker usually worked overtime (more than 40 hours per week), a regular hourly rate was calculated based on an assumption of the worker receiving 1.5 times their regular hourly rate for overtime hours worked.

Based on the CPS data, the Department estimated that the national average hourly rate was $18.81 and about 36 percent of these production workers earned less than $16 per hour.[41] Additionally, to better approximate the hourly rates of workers by plant, the Department estimated the average hourly wage of workers by state. Among states with at least 5 observations, the average hourly wage was less than $16 in only 4 of the 26 states. However, the average hourly wage rate was at least $15.70 in these four states, so any increases in wages to meet the $16 average rate will likely be minimal. Additionally, any potential transfers would likely decrease over time as wages grow.

These findings are consistent with other studies evaluating the impact of the USMCA's automotive ROO requirements. USTR indicated that automobile manufacturers would have at most minor changes to meet the USMCA rules as ''all automakers with a presence in North America have indicated to USTR that they will be able to meet the requirements of the new rules—and that they intend to do so (rather than forego preferential tariff treatment)—if they are able to benefit from the reasonable transition periods available in the agreement to make changes to their supply chains.''[42] Burfisher modeled the impacts of the change from NAFTA to USMCA, finding that for the economy as a whole, ''[w]ages for unskilled and skilled labor are unchanged in Canada and the United States due to USMCA.''[43]

A secondary wage effect may occur if the inflow of production, assembly, parts manufacturing, R&D, and IT into the U.S. drives up demand for this work and consequently labor prices. The Department expects these secondary impacts to be small because the expected increase in employment is small relative to the size of the labor market.

*F. Benefits*

The inclusion of the high-wage components in the LVC requirements may incentivize domestic investment, production, and employment, and the accompanying gain in producer surplus would qualify as a benefit for purposes of this regulatory impact analysis. As noted in section V.E., most domestic production is already conducted by workers earning at least $16 per hour. Canadian workers also generally meet this requirement. However, Mexican workers tend to earn less than workers in other USMCA Countries and so producers may need to increase Mexican wages or transfer vehicle or parts production to higher-wage U.S. (or Canadian) plants to meet this requirement.[44] If not, Mexican-produced covered vehicles would not qualify for preferential tariff treatment. Regardless, the cost for Mexican imports would likely increase. This would reduce the competitive advantage of Mexican manufacturing and may result in production flowing into the United States.

These effects are explained and quantified in several papers. The analyses consider the impacts of all changes to the automotive ROO. Therefore, the quantified impacts associated with the high-wage components of the LVC requirements may be smaller than the totals presented.

A USTR white paper quantified three main impacts in the United States of USMCA's changes in the ROO:[45]

- New capital investments of $34 billion over 5 years.
- Increased U.S. automotive parts purchases of $23 billion annually.
- A gain of 76,000 jobs.

The USITC also estimated the impacts of USMCA's automotive ROO on employment and investment.[46] They conducted a more complex analysis using a partial equilibrium model. Their numbers are smaller than those estimated by USTR. They estimated a net increase of approximately 28,100 full-time equivalent employees and an increase in investment of $632 million per year. These net increases consider both expected decreases in vehicle production in the United States and increased parts production.[47] The USITC estimated that the increase in parts production will outweigh the decrease in vehicle production.

Conversely, in a working paper by Burfisher, the authors argue that the new automotive ROO would lead to a decline in both North American vehicle and parts production by shifting production outside the region and reducing demand for new vehicles.[48] If so, the impacts projected by USTR and USITC would not be realized. The authors used a global, multisector, computable-general-equilibrium model to assess the impacts of certain USMCA provisions on trade, welfare, GDP, vehicle prices, wages, and rents. They

[38] Occupation is identified with the variable ''peio1ocd'' and codes 7710 to 8965. Industry is identified with the variable ''peio1icd'' and code 3570 (motor vehicles and motor vehicle equipment manufacturing). Census industry code 3570 equates to NAICS codes 3361, 3362, and 3363.

[39] The CPS variable is ''prernhly.''

[40] The CPS variables are ''prernwa'' and ''pehrusl1.'' The Department excluded two observations of non-hourly workers who responded to the usual hours question that their ''hours vary.''

[41] The Department excluded four observations from this analysis with hourly rates less than the applicable minimum wage.

[42] USTR. 2019. Estimated Impact of The United States-Mexico-Canada Agreement (USMCA) On the U.S. Automotive Sector. *https://ustr.gov/sites/default/files/files/Press/Releases/USTR%20USMCA%20Autos%20White%20Paper.pdf.*

[43] Burfisher, M. et al., 2019. NAFTA to USMCA: What is Gained? International Monetary Fund Working Paper. *https://www.imf.org/en/Publications/WP/Issues/2019/03/26/NAFTA-to-USMCA-What-is-Gained-46680.*

[44] Average assembly and parts hourly wages are above US$20 per hour in Canada. Mexican hourly wages for auto assembly averaged US$7.34 and for automotive parts averaged US$3.41 in 2017. CAR. 2018. NAFTA Briefing: Review of Current NAFTA Proposals and Potential Impacts on the North American Automotive Industry. *https://www.cargroup.org/wp-content/uploads/2018/04/nafta_briefing_april_2018_public_version-final.pdf.*

[45] USTR. 2019. Estimated Impact of The United States-Mexico-Canada Agreement (USMCA) On the U.S. Automotive Sector. *https://ustr.gov/sites/default/files/files/Press/Releases/USTR%20USMCA%20Autos%20White%20Paper.pdf.*

[46] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[47] The net increase in employment is comprised of an increase of 29,700 for parts production and a reduction of 1,600 for vehicle production. The net increase in investment includes an increase of $683 million for parts production and a reduction of $51 million for vehicle production.

[48] Burfisher, M. et al., 2019. NAFTA to USMCA: What is Gained? International Monetary Fund Working Paper. *https://www.imf.org/en/Publications/WP/Issues/2019/03/26/NAFTA-to-USMCA-What-is-Gained-46680.*

argue that the increased compliance costs associated with the RVC and LVC requirements would lead to an increase in imports from non-USMCA Countries because the advantage associated with preferential tariff treatment has been reduced. If North American manufacturers no longer qualify for preferential tariff treatment, the previous incentive to produce parts or vehicles in North America has been removed and manufacturing may shift overseas.[49]

## VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined the regulatory requirements of the IFR to determine whether it would have a significant economic impact on a substantial number of small entities. Costs to small businesses are expected to be *de minimis.*

The Department used the Small Business Administration (SBA) size standards to identify the number of businesses that are small entities.[50] For the affected industries, the SBA small business size standards range from 1,000 to 1,500 employees. These thresholds are shown in Table 4.

TABLE 4—SBA SMALL BUSINESS SIZE STANDARDS FOR AFFECTED INDUSTRIES

| NAICS | Industry | Size threshold (number of employees) |
|---|---|---|
| 326211 | Tire manufacturing (except retreading) | 1,500 |
| 336100 | Motor vehicle manufacturing | 1,500 |
| 336211 | Motor vehicle body manufacturing | 1,000 |
| 336310 | Motor vehicle gasoline engine and engine parts manufacturing | 1,000 |
| 336320 | Motor vehicle electrical and electronic equipment manufacturing | 1,000 |
| 336330 | Motor vehicle steering and suspension components (except spring) | 1,000 |
| 336340 | Motor vehicle brake system manufacturing | 1,250 |
| 336350 | Motor vehicle transmission and power train parts manufacturing | 1,500 |
| 336360 | Motor vehicle seating and interior trim manufacturing | 1,500 |
| 336370 | Motor vehicle metal stamping | 1,000 |
| 336390 | Other motor vehicle parts manufacturing | 1,000 |

The Department applied these thresholds to the U.S. Census Bureau's 2012 Economic Census to obtain the number of entities with employment below the small business threshold.[51] The ratios of small to large establishments, firms, and receipts were then applied to the more recent 2017 SUSB data. Lastly, receipts were inflated to 2019 dollars using the GDP deflator.[52] The Department estimated there are 4,835 small affected firms (97 percent of the total affected) and 5,218 small affected establishments (85 percent of the total) (Table 5).

Costs include two components: (1) Regulatory familiarization and (2) recordkeeping (as calculated in section V.D.). The Department used the same assumptions for costs regardless of entity size. However, because larger entities have more establishments, their estimated costs tend to be larger than for smaller entities. Some types of costs may be higher for small entities than large entities and some may be lower, so the Department has chosen not to adjust per-entity costs based on entity size. For example, smaller entities have fewer employees that will need to be considered in the LVC calculation, making recordkeeping costs lower. Conversely, smaller entities may have less advanced payroll software, making recordkeeping costs higher. According to Reinsch, ''larger, multinational firms in general are better equipped to examine and adapt to new rules of origin, whereas smaller firms will face upfront costs related to analysis of the rule and administrative tasks in adapting to them. Those unequal costs could cause smaller firms to unwittingly be out of compliance with the new rules or forced into financial belt tightening that otherwise would not occur.'' [53]

Total costs to small businesses in Year 1 are estimated to be $5.6 million (86 percent of total costs) (Table 5). This equates to an average of $1,162 per small firm ($1,165 for vehicle manufacturers and $1,161 for parts manufacturers). Costs in subsequent years would be smaller because regulatory familiarization costs are limited to Year 1. These estimates do not include producer adjustment costs, as explained in section V.D.iii. Inclusion of adjustment costs would increase the estimated cost per small business in the first few years when these adjustments are being made.

[49] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

[50] SBA, Summary of Size Standards by Industry Sector, 2019, *www.sba.gov/document/support--table-size-standards.*

[51] The 2012 data are the most recently available with receipts data disaggregated by detailed size categories. *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.*

[52] Bureau of Economic Analysis. 2020. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=13.*

[53] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

TABLE 5—SMALL BUSINESSES AFFECTED, APPLYING 2012 SMALL BUSINESS PROPORTIONS TO 2017 DATA

| Industry | Firms | Establishments | Annual receipts (billions $2019) | Total year 1 costs (millions $2019) | Costs as a percent of receipts |
|---|---|---|---|---|---|
| Total | 4,835 | 5,218 | $138.2 | $5.6 | 0.004 |
| 336100: Motor vehicle manuf | 255 | 261 | 12.2 | 0.3 | 0.002 |
| *336111: Automobile manuf* | *147* | *147* | *4.3* | *0.2* | *0.004* |
| *336112: Light truck & utility vehicle* | *42* | *46* | *2.8* | *0.1* | *0.002* |
| *336120: Heavy duty truck manuf* | *66* | *69* | *5.1* | *0.1* | *0.002* |
| Parts manufacturing | 4,580 | 4,957 | 126.0 | 5.3 | 0.004 |
| *336211: Motor vehicle body manuf* | *606* | *661* | *9.1* | *0.7* | *0.008* |
| *336300: Motor vehicle parts manuf* | *3,903* | *4,224* | *115.2* | *4.5* | *0.004* |
| *326211: Tire manuf. (except retreading)* | *71* | *73* | *1.6* | *0.1* | *0.005* |

Source: SUSB 2017, SUSB 2012.
[a] Employees on payroll in the pay period including March 12. Includes employees on paid sick leave, holidays, and vacations.

The impact of this rule was calculated as the ratio of annual cost per entity to average receipts per entity. The annual cost per entity is less than 0.01 percent of average annual receipts. The impact of this IFR on small entities will be *de minimis.* The Department certifies that the IFR will not have a significant economic impact on a substantial number of small entities.

The Department also considered costs relative to receipts for the smallest affected firms by both industry and size. As shown in Table 6, even for the smallest firms (those with fewer than 500 employees), costs are well below one percent of receipts in Year 1. These costs assume single-establishment firms. Costs would be somewhat higher for multi-establishment firms; however, multi-establishment firms are uncommon in these industries and size categories.

TABLE 6—YEAR 1 COSTS AND RECEIPTS OF THE SMALLEST BUSINESSES, WITH ONE ESTABLISHMENT, BY INDUSTRY AND SIZE

| Industry | Year 1 cost per firm ($2019) | Receipts per firm per year (millions $2019) | Year 1 cost as a percent of receipts |
|---|---|---|---|
| 336100: Motor vehicle manuf.: | | | |
| 0–4 employees | $1,142 | $1.58 | 0.07 |
| 5–9 employees | 1,142 | 3.81 | 0.03 |
| 10–19 employees | 1,142 | 29.64 | 0.00 |
| 20–99 employees | 1,142 | 25.14 | 0.00 |
| 100–499 employees | 1,142 | 95.43 | 0.00 |
| 336211: Motor vehicle body manuf.: | | | |
| 0–4 employees | 1,080 | 0.96 | 0.11 |
| 5–9 employees | 1,080 | 1.80 | 0.06 |
| 10–19 employees | 1,080 | 3.30 | 0.03 |
| 20–99 employees | 1,080 | 10.75 | 0.01 |
| 100–499 employees | 1,080 | 44.12 | 0.00 |
| 336300: Motor vehicle parts manuf.: | | | |
| 0–4 employees | 1,080 | 0.76 | 0.14 |
| 5–9 employees | 1,080 | 1.79 | 0.06 |
| 10–19 employees | 1,080 | 3.73 | 0.03 |
| 20–99 employees | 1,080 | 12.62 | 0.01 |
| 100–499 employees | 1,080 | 67.13 | 0.00 |
| 326211: Tire manuf. (except retreading): | | | |
| 0–4 employees | 1,080 | 0.49 | 0.22 |
| 5–9 employees | 1,080 | 1.71 | 0.06 |
| 10–19 employees | 1,080 | 2.87 | 0.04 |
| 20–99 employees | 1,080 | 10.78 | 0.01 |
| 100–499 employees | 1,080 | 164.27 | 0.00 |

Source: SUSB 2017.

## VII. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMRA) [54] requires agencies to prepare a written statement for rules with a federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $156 million ($100 million in 1995 dollars adjusted for inflation) or more in at least 1 year.[55] This statement must (1) identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate

[54] *See* 2 U.S.C. 1501.

[55] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative. This IFR is not expected to result in aggregate costs of $156 million per year to governments; however, costs may reach this threshold for the private sector.

## VIII. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order No. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

## IX. Effects on Families

The undersigned hereby certifies that this rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

## X. Executive Order 13175, Indian Tribal Governments

This rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

## List of Subjects in 29 CFR Part 810

Labor, Wages, Hours of work, Trade agreement, Motor vehicle, Tariffs, Imports, Whistleblowing.

Signed at Washington, DC, this 24th day of June, 2020.

**Cheryl M. Stanton,**

*Administrator, Wage and Hour Division.*

■ For the reasons set out in the preamble, the Department of Labor amends Title 29 of the Code of Federal Regulations by adding part 810 to read as follows:

# PART 810—HIGH-WAGE COMPONENTS OF THE LABOR VALUE CONTENT REQUIREMENTS UNDER THE UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT


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**Authority:** 19 U.S.C. 1508(b)(4) & 19 U.S.C. 4535(b).

## Subpart A—General

### § 810.1 Introduction.

This part provides the Department of Labor's rules to implement and administer the high-wage components of the labor value content requirements, as provided in the Agreement between the United States of America, the United Mexican States, and Canada, and the United States-Mexico-Canada Agreement Implementation Act.

### § 810.2 Purpose and scope.

(a) The USMCA replaces the 1994 North American Free Trade Agreement. The USMCA Preamble states that the parties to the agreement are resolved to, among other things, ''facilitate trade in goods and services between the Parties by preventing, identifying, and eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting good regulatory practices,'' and that the Parties are resolved to ''promote the protection and enforcement of labor rights, the improvement of working conditions, the strengthening of cooperation and the Parties' capacity on labor issues.''

(b) The purpose of the USMCA Implementation Act is to implement the USMCA. Section 202A of the Act, codified at 19 U.S.C. 4532, in part implements Article 7 of the Automotive Appendix. This Article establishes a labor value content requirement for passenger vehicles, light trucks, and heavy trucks, pursuant to which an importer can obtain preferential tariff treatment for a covered vehicle only if it meets certain minimum percentage benchmarks concerning the portion of the vehicle produced by workers who meet certain wage requirements, as described in subparts B, C, and D.

### § 810.3 Definitions and use of terms.

As used in this part—

*Administrative law judge.* Administrative law judge means a Department of Labor official appointed pursuant to 5 U.S.C. 3105.

*Administrator.* Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under this part.

*Alternative staging regime.* Alternative staging regime means the alternative to the standard staging regime, and provides for a different phase-in of the LVC requirements and additional time to meet those requirements.

*Annual purchase value.* Annual purchase value, as defined in the Uniform Regulations, means the sum of the values of high-wage materials purchased annually by a producer for use in the production of passenger vehicles, light trucks, or heavy trucks in

a plant located in the territory of a USMCA Country.

*Automotive Appendix.* Automotive Appendix means the Appendix to Annex 4–B of the USMCA.

*Automotive good.* Automotive good means a covered vehicle or a part, component, or material listed in the Automotive Appendix.

*CBP.* CBP means United States Customs and Border Protection, including its Commissioner.

*Covered vehicle.* Covered vehicle means a passenger vehicle, light truck, or heavy truck.

*Department.* Department means the United States Department of Labor.

*High-wage components of the LVC requirements.* High-wage components of the LVC requirements means the high-wage components of material and manufacturing expenditures, information technology expenditures, and assembly expenditures.

*LVC.* LVC means labor value content.

*Plant and/or Facility.* These terms are used interchangeably throughout this part and invoke the terms' meanings as found in the USMCA, Uniform Regulations, and applicable CBP guidance and regulations.

*Producer.* Producer means an individual or entity who engages in the production and/or assembly of automotive goods in North America. Except where indicated otherwise, the term ''producer'' encompasses the terms ''importer'' and ''exporter'' and their definitions as found in the Uniform Regulations, CBP regulations, and Appendix 5, Article 5.1 of the USMCA.

*Secretary.* Secretary means the Secretary of Labor or the Secretary's designee.

*Uniform Regulations.* Uniform Regulations means the regulations agreed upon by the United States of America, the United Mexican States, and Canada, pursuant to Chapter 5, Article 5.16 of the USMCA, regarding, in part, the interpretation, application, and administration of Chapter 4 (Rules of Origin) and Chapter 5 (Origin Procedures) of the USMCA.

*USMCA.* USMCA means the Agreement between the United States of America, the United Mexican States, and Canada.

*USMCA Country(ies).* USMCA Country means the United States of America, the United Mexican States, or Canada. USCMA Countries means any combination of the United States of America, the United Mexican States, and Canada. These regulations use these terms interchangeably with the term ''North America.''

*USMCA Implementation Act.* USMCA Implementation Act means the United States-Mexico-Canada Agreement Implementation Act, Pub. L. 116–113, 134 Stat. 11 (2020), which is codified at 19 U.S.C. 1508, as amended, and 19 U.S.C. 4501 *et seq.*

*WHD.* WHD means the Wage and Hour Division of the U.S. Department of Labor.

## Subpart B—Calculating the High-Wage Component of Material and Manufacturing Expenditures

### § 810.100 Scope and purpose of this subpart.

(a) Section 202A(e) of the USMCA Implementation Act authorizes the Secretary, in cooperation with the Secretary of the Treasury, to participate in a verification of whether covered vehicle production complies with the high-wage components of the LVC requirements set forth in Article 7 of the Automotive Appendix or, if the producer is subject to the alternative staging regime, under Articles 7 and 8 of the Automotive Appendix. This subpart addresses calculation of the high-wage material and manufacturing expenditures component of the LVC (referred to in the Uniform Regulations as high-wage material and labor expenditures).

(b) The regulations in this subpart describe how producers can meet the high-wage-related aspect of the material and manufacturing expenditures component, which concerns whether workers engaged in direct production work at a plant or facility included in a producer's material and manufacturing expenditures calculation earn an average hourly base wage rate of at least US$16 per hour. All other aspects of material and manufacturing expenditures are addressed in the Uniform Regulations and regulations and/or guidance issued by CBP or other federal agencies.

### § 810.105 Calculating the average hourly base wage rate.

(a) The average hourly base wage rate (also referred to in the USMCA as the production wage rate, and in the Uniform Regulations as the average base hourly wage rate) is calculated by dividing the total base wages paid for all hours worked in direct production at a plant or facility by the total number of hours worked in direct production at that plant or facility. The average hourly base wage rate must be at least US$16 per hour for the plant or facility to count toward a producer's LVC obligation.

(b) The three components of this calculation are computed as follows:

(1) *Hourly base wage rate* is the rate of compensation a worker is paid for each hour worked in direct production.

(i) Benefits, bonuses, premium payments, incentive pay, overtime premiums, and all other similar payments are excluded from the hourly base wage rate.

(ii) Amounts deducted from a worker's pay that are for the benefit of the worker and are reasonable may be included in the hourly base wage rate. The principles in determining whether deductions are for the benefit of the worker and are reasonable, and thus may be included as part of the hourly base wage rate, are explained in more detail in 29 CFR part 531.

(2) *Hours worked in direct production* means all time a worker spends personally involved in the production of passenger vehicles, light trucks, heavy trucks, or parts used in the production of these vehicles at a plant or facility located in a USMCA Country, or directly involved in the set-up, operation, or maintenance of equipment or tools used in the production of those vehicles or parts at that plant or facility. The total number of hours worked in direct production at a plant or facility, as referenced in paragraph (a) of this section, is calculated by adding together hours in direct production (as calculated under paragraphs (b)(2)(i) and (ii)) for all workers who perform direct production work at that plant or facility.

(i) Except for workers described in § 810.130, if at least 85 percent of a worker's total work hours are hours worked in direct production, the worker's total work hours are considered hours worked in direct production, and are included in the average hourly base wage rate calculation.

(ii) Except for workers described in § 810.130, if less than 85 percent of a worker's total work hours are hours worked in direct production, only the worker's hours worked in direct production are included in the average hourly base wage rate calculation.

(3) *Total base wages* is calculated using a two-step process. First, multiply each worker's hourly base wage rate (for the time period described in paragraph (d) of this section) by that worker's number of hours worked in direct production at that rate (for the same time period). Second, add the values calculated in step one to obtain total base wages paid for all hours worked in direct production at the plant or facility.

(c) The producer must include all hours worked in direct production at a plant or facility (other than by workers described in § 810.130) when calculating the average hourly base wage rate for that plant or facility. Where a worker is paid by a third party

(such as a temporary employment agency), only the wages received by the worker are included in the average hourly base wage rate calculation.

(d) The producer must elect one of the following periods to calculate the average hourly base wage rate:

(1) The producer's previous fiscal year;

(2) The previous calendar year;

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

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

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

**§ 810.110 Examples of direct production work.**

(a) Direct production work includes production of passenger vehicles, light trucks, or heavy trucks, or parts for these vehicles, as well as the set-up, operation or maintenance of tools or equipment used in the production of those vehicles and parts. The work may take place on a production line, at a workstation, on the shop floor, or in another production area. Direct production work includes material handling of vehicles or parts; inspections of vehicles or parts, including inspections that are normally categorized as quality control and, for heavy trucks, pre-sale inspections carried out at the place where the vehicle is produced; on-the-job training regarding the execution of a specific production task; and maintaining and ensuring the operation of the production line or production area and the operation of tools and equipment used in the production of vehicles or parts, including the cleaning of the line or production area and the places around it.

(b) Except for workers described in § 810.130, time spent (by, for example, line supervisors and team leads) providing on-the-job training regarding the execution of a specific production task or relieving a worker in the performance of direct production duties is direct production work. Time spent managing or supervising workers is not direct production work.

**§ 810.115 Paid meal time and paid break time.**

Paid meal time and paid break time are counted as direct production work for purposes of determining whether at least 85 percent of a worker's total work hours are hours worked in direct production. However, if less than 85 percent of a worker's total work hours are worked in direct production, paid meal time and paid break time are not included in the average hourly base wage rate calculation.

**§ 810.120 Part-time, temporary, seasonal, and contract workers.**

(a) *Part-time, temporary, and seasonal workers.* Hours of part-time workers, temporary workers, and seasonal workers are treated the same as hours of full-time workers for purposes of calculating the average hourly base wage rate.

(b) *Employees.* The average hourly base wage rate calculation includes workers' hours regardless of whether the workers have an employment relationship with the producer.

**§ 810.125 Workers paid on a non-hourly basis.**

(a) *General.* If any worker performing direct production work is compensated by a method other than hourly, such as a salary, piece-rate, or day-rate basis, the worker's hourly base wage rate shall be calculated by converting the salary, piece-rate, or day-rate to an hourly equivalent. This hourly equivalent is then multiplied by the number of hours worked in direct production for purposes of calculating the average hourly base wage rate.

(b) *Examples.* (1) Where the salary, piece-rate, or day-rate wage is paid to a worker on a weekly or bi-weekly pay period basis, the total salary, piece-rate, or day-rate compensation for that pay period will be divided by the total number of hours worked in the pay period to determine the hourly equivalent.

(2) Where the salary, piece-rate, or day-rate wage is paid to a worker on a semi-monthly pay period basis, the total salary, piece-rate, or day-rate compensation will be converted to a weekly equivalent by multiplying the compensation by 24 (semi-monthly pay periods in a year) and dividing by 52 (weeks per year). This weekly equivalent will be divided by the total number of hours worked in the week to determine the hourly equivalent.

(3) Where the salary, piece-rate, or day-rate wage is paid to a worker on a monthly pay period basis, the total salary, piece-rate, or day-rate compensation will be converted to a weekly equivalent by multiplying the compensation by 12 (monthly pay periods in a year) and dividing by 52 (weeks per year). This weekly equivalent will be divided by the total number of hours worked in the week to determine the hourly equivalent.

**§ 810.130 Executive, Management, Research and Development, Engineering, and Other Personnel.**

The average hourly base wage rate does not include any hours worked by:

(a) Executive or management staff who generally have the authority to make final decisions to hire, fire, promote, transfer and discipline employees;

(b) Workers engaged in research and development; or

(c) Engineers, mechanics, or technicians, if such personnel are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts.

**§ 810.135 Interns, students, and trainees.**

Hours worked by an intern, student, or trainee who does not have an express or implied compensation agreement with the employer are not considered hours worked in direct production, and therefore are not included in the average hourly base wage rate calculation.

**§ 810.140 High-wage transportation or related costs for shipping a high-wage part or material.**

(a) High-wage transportation or related costs for shipping a high-wage part or material within the USMCA Countries may be used to calculate high-wage material and manufacturing costs if those costs are not otherwise included in the annual purchase value.

(b) Where the requirements of paragraph (a) of this section are met, the producer may claim in its calculation of high-wage material and manufacturing expenditures high-wage transportation or related costs for shipping a high-wage part or material within the USMCA Countries, for each transportation, logistics, or material handling provider that paid an average hourly base wage rate of at least US$16 per hour to its direct production workers performing these services. Such workers would include drivers and loaders.

**§ 810.145 Currency exchange.**

The high-wage component of material and manufacturing expenditures (and assembly expenditures under § 810.300) is expressed in U.S. dollars—US$16 per hour. Rules governing currency exchange are set forth and addressed in the Uniform Regulations and regulations and/or guidance issued by the Department of the Treasury and/or CBP.

**§ 810.150 Adjustment of the average hourly base wage rate.**

If the USMCA Countries agree to adjust the dollar amount of the average hourly base wage rate requirement, WHD will publish a notice of the

adjusted rate in the **Federal Register**. The regulations in this part will apply with respect to the adjusted rate in the same manner they applied with respect to the US$16 per hour rate.

## Subpart C—Calculating the High-Wage Technology Expenditures Credit

### § 810.200 High-wage technology expenditures credit.

(a) A producer may receive a 10 percent credit towards its total LVC requirement by demonstrating that the sum of its annual expenditures in North America on wages for research and development and information technology is equal to or greater than 10 percent of its annual expenditures on production wages in North America. If a producer's annual expenditures in North America on wages for research and development and information technology is less than 10 percent of the producer's annual expenditures in North America on production wages, then the producer is eligible for a credit equal to the actual percentage of the producer's annual expenditures in North America on wages for research and development and information technology as a percentage of its total annual expenditures in North America on production wages.

(b) The three components of this calculation are computed as follows:

(1) *Annual expenditures in North America on wages for research and development* means total annual corporate spending in North America on wages for research and development, including prototype development, design, engineering, testing, or certifying operations.

(2) *Annual expenditures in North America on wages for information technology* means total annual corporate spending in North America on wages for information technology, including software development, technology integration, vehicle communications, and information technology support operations.

(3) *Annual expenditures on production wages in North America* means total annual corporate spending on wages for production of passenger vehicles, light trucks, and heavy trucks in North America.

## Subpart D—Calculating the High-Wage Assembly Expenditures Credit

### § 810.300 High-wage assembly expenditures credit.

(a) A producer may receive a single credit of five percent towards the total LVC requirement if it demonstrates any one of the following:

(1) Operation of (or a long term contract with) a ''high-wage'' engine assembly plant in North America with a minimum annual production capacity of originating engines;

(2) Operation of (or a long term contract with) a ''high-wage'' transmission assembly plant in North America with a minimum annual production capacity of originating transmissions; or

(3) Operation of (or a long term contract with) a ''high-wage'' advanced battery assembly plant in North America with a minimum annual production capacity of originating advanced battery packs.

(b) A plant is ''high-wage'' for purposes of this section if it has an average hourly base wage rate of at least US$16 per hour for the entire plant. The US$16 per hour average hourly base wage rate for high-wage assembly expenditures credit is determined by calculating the average hourly base wage rate in the same manner as detailed in § 810.105.

(c) Minimum annual production capacity levels are set forth in the USMCA and in guidance issued by CBP and are outside the Department's authority.

(d) The definition of ''long term contract'' is set forth in the Uniform Regulations.

(e) If a plant used by a producer to satisfy the material and manufacturing expenditures component of the LVC requirement meets the requirements of paragraph (a) of this section, the producer may use that plant to qualify for the high-wage assembly expenditures credit.

## Subpart E—Certification Provisions

### § 810.400 Scope and purpose of this subpart.

Section 202A(c)(1)(B) of the USMCA Implementation Act requires the Secretary, in consultation with CBP, to ensure that a vehicle producer's LVC certification does not contain omissions or errors before the certification is considered properly filed. The regulations in this subpart describe the scope of the Secretary's review under this statutory provision, and what certification information a vehicle producer submits to CBP related to that review. All matters other than reviewing the high-wage components of the LVC certification for omissions or errors are outside of the Secretary's purview, and are addressed in the Uniform Regulations and regulations and/or guidance issued by CBP or other federal agencies.

### § 810.405 Certification.

(a) To satisfy its certification obligation under section 202A(c)(1)(B)(i) of the USMCA Implementation Act pertaining to the high-wage components of the LVC requirements, WHD will review for omissions or errors the following information relating to the high-wage components of the LVC requirements, which the producer of the covered vehicle (rather than the importer or exporter) submits to CBP.

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

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

(3) The time period the producer of the covered vehicle is using for its LVC calculations. For purposes of calculating the LVC, a producer of the covered vehicle may use any one of the time periods used for calculating the average hourly base wage rate, as described in § 810.105(d).

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

(5) A statement that the average hourly base wage rate, calculated consistent with § 810.105, meets or exceeds US$16 per hour for each plant or facility identified in paragraph (a)(4) of this section.

(6) If applicable, a statement that the producer is using high-wage transportation or related costs to meet the high-wage material and

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

(7) If applicable, a statement that the producer is using the high-wage technology expenditures credit to meet the LVC requirements. If the producer is using the high-wage technology expenditures credit, a producer must identify the percentage the producer is claiming as a credit towards the total LVC requirement.

(8) If applicable, a statement that the producer is using the high-wage assembly expenditures credit to meet the LVC requirements. If the producer is using the high-wage assembly expenditures credit, the producer must identify the following:

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

(ii) A statement that the average hourly base wage rate, calculated consistent with §§ 810.300 and 810.105, meets or exceeds US$16 per hour for the assembly plant used to qualify for the high-wage assembly expenditures credit.

(b) Producers of covered vehicles must ensure that records are kept of information to support the calculations submitted under paragraphs (a)(5), (7), and (8)(ii). Producers must be able to provide records upon request by the Department, as described in § 810.600(c), but the records may be physically maintained by a supplier or contractor. The Department will accept records directly from a supplier or contractor where, for example, the producer and supplier or contractor have contracted for such an approach.

(c) This section applies to all producers of covered vehicles during the alternative staging regime period and after the alternative staging regime period ends.

#### § 810.410 Administrator's review for omissions or errors.

(a) The Administrator will review the information submitted under § 810.405(a) for omissions or errors. If the Administrator determines that the high-wage components of the certification contain no omissions or errors, WHD will notify CBP that the high-wage components of the certification have been properly filed.

(b) If the Administrator determines that the high-wage components of the certification contain an omission or error, and therefore the certification has not been properly filed, WHD will provide written or electronic notice of the deficiency to CBP. CBP will require the producer of the covered vehicle to respond with a modified certification or otherwise. If, upon review of the response, the Administrator determines that the high-wage components of the certification contain no errors or omissions, WHD will notify CBP that the high-wage components of the certification have been properly filed. If, upon review of the response, the Administrator continues to find an omission or error, or if no response is submitted, WHD will provide written or electronic notification to CBP that the high-wage components of the certification have not been properly filed. The producer may appeal the Administrator's determination pursuant to § 810.700.

### Subpart F—Verification of the Labor Value Content's Wage Components

#### § 810.500 Scope and purpose of this subpart.

Section 202A(e)(1) of the USMCA Implementation Act gives the Secretary, in conjunction with the Secretary of the Treasury, authority to verify whether a covered vehicle complied with the LVC requirements set forth in Article 7 of the Automotive Appendix, or if the producer is subject to the alternative staging regime, under Articles 7 and 8 of the Automotive Appendix. The Secretary's role in conducting verifications is limited to verifying compliance with the high-wage components of the LVC requirements. All matters other than the high-wage components of the LVC verification are outside of the Secretary's purview and are addressed in the Uniform Regulations and regulations and/or guidance issued by the Department of the Treasury, CBP, or other federal agencies.

#### § 810.505 Scope of verification.

(a) The Administrator may verify, through investigation, whether the producer complied with the high-wage components of any part of the LVC requirements, including material and manufacturing expenditures, technology expenditures, and assembly expenditures. The producer is responsible for all aspects of compliance with the high-wage components of the LVC requirements at its plants and facilities as well as the plants or facilities of the suppliers and contractors listed in the producer's certification.

(1) For verifications of the wage component of high-wage material and manufacturing expenditures, the Administrator may verify whether the average hourly base wage rate in any plant or facility relied on by the producer in its certification meets the US$16 per hour requirement. If the producer's certification includes transportation or related costs for shipping as part of its LVC calculation, the Administrator may verify whether any transportation, logistics, or material handling provider relied on by the producer in its certification meets the US$16 per hour requirement.

(2) For verifications of high-wage technology expenditures, the Administrator may verify that a producer properly claimed a credit for annual expenditures on wages for research and development, information technology, and production in North America.

(3) For verifications of high-wage assembly expenditures, the Administrator may verify whether an engine, transmission, or advanced battery assembly facility that a producer relied on in its certification has an average hourly base wage rate of at least US$16 per hour.

(b) The Administrator may, as appropriate:

(1) Examine, or cause to be examined, upon 30-day notice, any record (including any statement, declaration, document, or electronically generated or machine-readable data) described in the notice with reasonable specificity.

(2) Request information from any officer, worker, or agent of a producer of automotive goods, as necessary, that may be relevant with respect to whether the production of covered vehicles

meets the high-wage components of the LVC requirements set forth in Article 7 of the Automotive Appendix, or if the producer is subject to the alternative staging regime, Articles 7 and 8 of the Automotive Appendix. This information may be obtained under oath, by deposition or otherwise, at the discretion of the Administrator.

(c) The Administrator is authorized to request and examine records relating to wages, hours, job responsibilities, or any other information in any plant or facility relied on by a producer of covered vehicles to demonstrate that the production of such vehicles by the producer meets the LVC requirements set forth in Article 7 of the Automotive Appendix or, if the producer is subject to the alternative staging regime, Articles 7 and 8 of the Automotive Appendix.

(d) The Administrator will conduct its verification consistent with the timelines set forth in Article 5.9 of the USMCA.

**§ 810.510 Notice to a producer that a verification of compliance with labor value content requirements has been initiated.**

CBP will notify a producer that a verification of LVC compliance has been initiated, including whether the verification concerns the high-wage components of the producer's LVC certification. This notification applies to verifications of compliance with the LVC referred to the Administrator by CBP, as well as verifications the Administrator has initiated with CBP.

**§ 810.515 Conduct of verifications.**

The Administrator shall conduct verifications as may be appropriate and, in connection therewith, enter and inspect any places, inspect any records and make transcriptions or copies thereof, question any persons, and gather any other information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the verification. Upon request by the Administrator, an employer or other entity whose plant or facility is subject to verification shall make available to the Administrator all records, information, persons, and places that the Administrator deems necessary to copy, transcribe, question, or inspect to determine compliance regarding the matters which are the subject of the verification. In conducting any verifications, the Administrator will coordinate with CBP and other federal agencies (including requesting information from such agencies) as appropriate.

**§ 810.520 Confidentiality.**

The Administrator shall, to the full extent of the law, protect the confidentiality of any person who provides information to the Department in confidence in the course of a verification or otherwise under this subpart.

**§ 810.525 Notice provided to CBP regarding the Administrator's findings.**

The Administrator will provide verification findings and analysis to CBP, which retains the authority to make the final determination of LVC compliance, based in part on the Administrator's verification findings.

**§ 810.530 Verification of labor value content compliance for producers subject to alternative staging regime.**

The verification procedures outlined in this subpart apply to producers whether or not they are subject to the alternative staging regime, as outlined in Articles 7 and 8 of the Automotive Appendix.

## Subpart G—Recordkeeping Requirements

**§ 810.600 Recordkeeping requirements.**

(a) *General.* The Administrator is authorized by section 206(b)(4)(B) of the USMCA Implementation Act to require a producer to make, keep, and render for examination and inspection, records and supporting documentation related to a producer's certification of compliance with the LVC requirements set forth in Article 7 of the Automotive Appendix or, if the producer is subject to the alternative staging regime, under Articles 7 and 8 of the Automotive Appendix.

(b) *Form of records.* No particular order or form of records is required, and records may be maintained in any medium; however, the Administrator prefers electronically generated or machine-readable data.

(c) *Inspection of records.* The records described in this section must be made available to an authorized representative of the Department for inspection, copying, and transcription upon written request to the producer. The request will describe with reasonable specificity the records that are being sought, and the party receiving the request will have 30 days from the date of the written request to provide the requested records, unless the party receiving the request has requested and obtained an extension of this time period at the discretion of the Department.

(d) *Period of retention.* Importers must ensure that records specified in these regulations are kept for 5 years from the date of importation of any vehicle for which preferential tariff treatment was claimed, and exporters and producers must ensure that records specified in these regulations are kept for 5 years from the date on which the certification of origin was completed, or for a longer period if the USMCA Countries so specify. Producers must be able to provide records upon request by the Department, as described in § 810.600(c), but the records may be physically maintained by a supplier or contractor. The Department will accept records directly from a supplier or contractor where, for example, the producer and supplier or contractor have contracted for such an approach.

(e) *Records to be preserved to demonstrate compliance with the high-wage material and manufacturing expenditures component and eligibility for the high-wage assembly expenditures credit.* The records and information listed in this paragraph must be maintained for each worker for whom records must be maintained pursuant to 29 CFR 516.2 and who worked at any plant or facility relied upon by a producer to meet the high-wage material and manufacturing expenditures component or the high-wage assembly expenditures credit of the LVC requirements, during the time period the producer used for calculating the LVC. For workers who are employed outside the United States, but if employed in the United States would be subject to the recordkeeping requirements under 29 CFR 516.2, the producer must also maintain the records detailed in this paragraph for such workers. These records must also be maintained for any other worker (in any USMCA Country) who performed direct production work at the plant or facility during the time period used for calculating the LVC, even if such workers do not fall within the recordkeeping requirements of 29 CFR 516.2.

(1) *Worker information.* Full name (and identifying symbol or number if used in place of the worker's name on any time, work, or payroll records), job title, home address, and other available contact information.

(2) *Time records.* The total number of daily and weekly hours worked. For workers who work a fixed schedule, the producer may instead maintain records that show the schedule of daily and weekly hours the worker normally works instead of the hours worked each day and each workweek. However, if this method is used, in weeks in which a worker adheres to this schedule, the worker must indicate by check mark, statement or other method that such hours were in fact actually worked, and

in weeks in which more or less than the scheduled hours are worked, the records must show the exact number of hours worked each day and each week.

(3) *Earnings records.* Payroll records showing the date wages were paid and the time period covered by such wage payments, each worker's hourly rate of pay and basis of pay (hourly, salary, piece rate, day rate, etc.), total daily or weekly straight-time earnings, total premium pay for overtime hours (if any), total pay for the pay period, and any deductions taken from each worker's pay, including the amount and reason for the deduction. To the extent that a worker's rate of pay or straight-time earnings include benefits, bonuses, premium payments, incentive pay, or other similar payments excluded from the hourly base wage rate, as defined at § 810.105, records must clearly identify those payments and state the amount of such payments.

(4) *Certificates, agreements, plans, notices, collective bargaining agreements, etc.* Any collective bargaining agreements, written agreements or memoranda, individual contracts, plans, trusts, employment contracts, or written memorandum summarizing oral agreements or understandings applicable to any workers who work in direct production.

(5) *Direct production records.* A record of all hours that workers have worked in direct production, as defined at § 810.105(b)(2), including the workers' names, type of direct production work performed, hours worked by each worker that constitute direct production, hourly base wage rate paid to each worker for the direct production hours worked, and total wages paid to workers for those direct production hours worked. A producer's records must distinguish hours worked in direct production from other hours worked, to the extent that workers perform both direct production work and work not in direct production during the relevant time period. However, if at least 85 percent of a worker's total work hours are hours worked in direct production, the producer may simply record such workers' total hours worked during the relevant time period, so long as the producer can show that its recordkeeping system indicates when such workers work hours not in direct production when such situations occur.

(6) *Records relating to high-wage transportation or related costs for shipping.* Producers must maintain any records relied upon to establish the wages their transportation, logistics, or material handling service providers paid to their direct production workers performing these services. Such records may include, for example, contracts for transportation or shipping, union contracts entered into by transportation or shipping providers, and other contracts that reflect the rates paid to workers employed by transportation or shipping contractors that are relied upon by producers to establish transportation or related costs for shipping.

(f) *Records to be preserved to demonstrate eligibility for the high-wage technology expenditures credit.* If a producer is using high-wage technology expenditures to meet the high-wage components of the LVC requirements, the producer must maintain a record of the total wages paid to workers in North America who perform research and development or information technology work, as defined at § 810.200(b)(1) and (2), including the workers' names and type of research and development or information technology work performed. The producer must also maintain a record of the total wages paid to workers in North America who perform direct production work, as defined at § 810.200(b)(3), including the workers' names and type of production work performed.

(g) *Calculations relating to labor value content requirements.* Producers must also maintain any additional records not described in paragraphs (e) and (f) of this section that they relied on to support the calculations used to establish they meet the high-wage components of the LVC requirements.

(h) *Relation to other recordkeeping requirements.* Nothing in this section shall excuse any producer from complying with any recordkeeping or reporting requirement imposed by any other federal, state or local law, ordinance, regulation, or rule. This includes, but is not limited to, any recordkeeping requirements concerning other components of the LVC requirements as set forth in regulations issued by CBP or any other federal agency.

## Subpart H—Administrative Review of the Department's Analysis and Findings

### § 810.700 Administrative review procedures.

(a) *Initiation of review.* Upon receipt from CBP of a notice of a protest filed under 19 U.S.C. 1514 that meets the requirements of the regulations at 19 CFR part 174 and relates to the Department's analysis of the high-wage components of the LVC requirements, the Department will conduct an administrative review of its initial analysis.

(b) *Procedure for review.* Review of the Department's analysis will be conducted by the Administrator, or the Administrator's designee, as the presiding official. When a presiding official is designated by the Administrator, the official must rank higher than the official who issued the decision that is the subject of the protest.

(c) *Proceeding before an administrative law judge.* In any case where the presiding official determines, in the discretion of that official, that it is appropriate, and there exist disputed questions of fact, the presiding official may refer those questions to the Chief Administrative Law Judge for a recommended decision.

(1) Upon receipt from the Administrator, the Chief Administrative Law Judge shall designate an administrative law judge to hear the disputed questions of fact.

(2) Hearings held under this subpart shall be conducted under the Department's rules of practice and procedure for administrative hearings found in 29 CFR part 18.

(3) The recommended decision of the administrative law judge shall be issued within 120 days of when the Administrator referred the questions of fact to the Chief Administrative Law Judge, or longer with consent of the parties.

(4) The recommended decision shall be limited to a determination of the questions of fact presented by the Administrator, and shall include a statement of findings and recommendations, with reasons and bases therefore, for each question of fact presented by the Administrator.

(5) The Administrator shall have discretion to accept or reject the findings of the administrative law judge in full or in part.

(d) *Scope of review.* The presiding official, in a review under paragraph (b) of this section, shall have the discretion to consider any evidence relevant to rendering a determination under this section. In the event that new evidence or a new legal argument is made by the protestor in a review under paragraph (b) of this section, the presiding official may request additional information from the protestor, and/or additional verification by WHD.

(e) *Time frame for review.* The Administrator will strive to issue a decision under this section within 1 year from the date the Administrator receives the notice of protest from CBP. This timeframe does not include the time during which any additional

verification or collection of additional information may take place in response, for example, to newly raised issues.

(f) *Results of review.* After considering the relevant evidence and issues, the Administrator shall provide a determination containing the results of the administrative review to CBP.

## Subpart I—Whistleblower Protections

### § 810.800 Prohibited acts.

(a) *Discrimination.* (1) It is unlawful to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against any person because the person has—

(i) Disclosed information to a federal agency or to any person relating to a verification of the producer's compliance with the LVC requirements, or

(ii) Cooperated or sought to cooperate in a verification concerning the producer's compliance with the LVC requirements.

(b) *Complaints.* (1) Any person who believes that he or she has been discriminated against in violation of this section may file a complaint alleging such discrimination.

(2) The complaint shall be filed with WHD. A complaint may be filed at any WHD local office; the address and telephone number of local offices may be found in telephone directories or at the following internet address: *http://www.dol.gov/whd.*

(3) Within 12 months after the alleged discriminatory act occurs, a person who believes that he or she has been discriminated against may file, or have filed by any person on that person's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, phone call, or email communication will be considered to be the date of filing. If the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

(4) No particular form of complaint is required, and complaints may be filed in person, in writing, or over the telephone. If oral, the complaint shall be reduced to writing by the WHD official who receives the complaint. The complaint shall set forth sufficient facts for the Administrator to determine whether there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed and, therefore, that an investigation is warranted.

(5) If the Administrator determines that an investigation of a complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing. The time for the investigation may be increased with the consent of both parties (the whistleblower and the party that allegedly engaged in discrimination), or if, for reasons outside of the control of the Administrator, the Administrator needs additional time to obtain information from either party or other sources to determine whether a violation has occurred. No hearing or appeal pursuant to this subpart shall be available regarding the Administrator's determination of whether an investigation on a complaint is warranted.

(c) *Administrator's determination.* (1) Following an investigation, the Administrator shall issue a written determination. Such determination shall be served on all known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(2) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(3) The Administrator's determination shall:

(i) Set forth the determination of the Administrator and the reason or reasons therefore, and in the case of a finding of violation(s), prescribe any remedies, including monetary relief, injunctive relief, civil money penalties of up to $50,000 per violation, and/or any other remedies assessed.

(ii) Inform the interested parties that they may request a hearing pursuant to paragraph (d) of this section.

(iii) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(iv) Set forth the procedure for requesting a hearing, and give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of Labor (upon whom copies of the request must be served).

(d) *Administrative review of the Administrator's determination.* (1) Any party desiring review of a determination issued under paragraph (c) of this section, including judicial review, shall make a request for such an administrative hearing in writing to the Chief Administrative Law Judge at the address stated in the notice of determination. If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the administrative law judge issues an order affirming the decision.

(2) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(3) Copies of the request for a hearing shall be sent by the requestor to the WHD official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

(4) The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 18.

(5) Within 60 calendar days after the date of the hearing, the administrative law judge shall issue a decision. If the Administrator or any party desires review of the decision, including judicial review, a petition for review by the Administrative Review Board shall be filed pursuant to paragraph (e) of this section.

(e) *Appeal of a decision of the administrative law judge.* Any party desiring review of the decision of the administrative law judge may appeal that decision by filing a petition for review with the Administrative Review Board within 30 days of the date of the administrative law judge's decision. If a petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision, or unless and until 30 calendar days have passed after the Administrative Review Board's receipt of the petition for review and the Administrative Review Board has not issued notice to the parties that the Administrative Review Board will review the administrative law judge's decision.

(f) *Review of an order of the Administrative Review Board.* An order of the Administrative Review Board under this subpart is subject to discretionary review by the Secretary of Labor (as provided in Secretary of Labor's Order 01–2020 or any successor to that order).

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