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information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to restrain violations of the Act, or may assess civil money penalties against the employer.

6. Your rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

(Date)

(Signature)

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

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) and 19 U.S.C. 4535(b); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114-74 at sec. 701.

SOURCE: 85 FR 39810, July 1, 2020, unless otherwise noted.

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 co-operation 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. USMCA 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

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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

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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

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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

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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

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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 alter-

native 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

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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.

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§ 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

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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 com-

plying 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

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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 \$60,614 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 Administra-

tor'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

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provided in Secretary of Labor’s Order 01–2020 or any successor to that order).

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PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

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