



**MEMA Comments to the
Department of Labor, Wage and Hour Division
Interim Final Rule with Request for Comments; High-Wage Components of the
Labor Value Content Requirements Under the U.S.-Mexico-Canada Agreement
RIN 1235-AA36
August 31, 2020**

Introduction

The Motor & Equipment Manufacturers Association (MEMA) submits these comments in response to the U.S. Department of Labor, Wage and Hour Division (DOL-WHD) interim final rule (IFR) with request for comments published July 1, 2020.¹ The IFR specifically addresses the high-wage components of the labor value content (LVC) requirements of the U.S.-Mexico-Canada Agreement (USMCA).

MEMA is the nation's leading trade association representing over 1,000 motor vehicle parts supplier companies that manufacture components, technologies, and systems for use in passenger vehicles and heavy trucks.² MEMA members provide original equipment (OE) components and systems to new vehicle manufacturers as well as aftermarket parts to maintain and repair vehicles in service. In total, vehicle part suppliers represent the largest sector of manufacturing jobs in the United States, directly employing over 871,000 people in all 50 states, generating 2.4 percent of U.S. GDP.³ Our members lead the way in developing advanced, transformative technologies that enable safer, smarter, and more efficient vehicles.

MEMA has been highly engaged in the updated USMCA and actively advocated the U.S. Congress to pass the implementation legislation. MEMA supported the USMCA in principle, even as parts suppliers continue to face the cumulative impacts of multiple, concurrent trade actions, such as tariffs on key specialized materials and component parts used in their production. Certainly, the unexpected and unprecedented economic climate resulting from the global pandemic, compounded by USMCA's mid-year entry into force, has added even more pressure on companies and their resources.

From the early days of the trade negotiations to the final days prior to USMCA's entry into force, MEMA has worked closely with the Office of the United States Trade Representative (USTR) and U.S. Customs and Border Protection discussing the USMCA automotive rules of origin (ROO) implementation challenges. Specifically, MEMA has been educating the agencies about vehicle parts manufacturers and seeking important clarifications related to the ROO, wherever possible. We have long recognized that the short timeline to comply is achievable *if* producers have clear direction in

¹ 85 Fed Reg at 39782.

² MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA – The Association for Sustainable Manufacturing; and, Original Equipment Suppliers Association (OESA).

³ MEMA Economic Impact Study https://www.mema.org/sites/default/files/MEMA_ImpactBook.pdf.

the uniform regulations and related implementing instruments. The comments of MEMA regarding the Department's IFR will address the following:

- Vehicle Parts Suppliers (Parts Producers) and the Supply Chain
- Implications of LVC Requirements on Vehicle Parts Suppliers (Parts Producers)
- Average Hourly Base Wage Rate and Implications of Temporary and Seasonal Workers
- Needed Interpretations and Clarifications for Certification, Verification and Recordkeeping that Impact Suppliers
- Underestimated Costs of Regulatory Burden

In these comments, MEMA has focused on achieving greater clarity in the final regulations because, despite the publication of the USMCA Uniform Regulations,⁴ there is still uncertainty related to potential compliance and commercial impacts for suppliers. Moreover, while DOL-WHD mentions suppliers in a few parts of the IFR, some important clarifications are still necessary to crystalize how aspects of the rule should be interpreted with respect to vehicle suppliers. Specifically, MEMA urges the DOL-WHD to:

- Clarify the limited purpose for which vehicle producers may use parts producers in their LVC calculations;
- Allow for accommodations for parts producers related to information-gathering from third-party temporary or seasonal employment agencies;
- Revise regulatory text regarding inspection of parts producers' records in the event of a verification; and,
- Reassess the underestimated analysis of the impact of the regulatory burden on industry.

(Please note, throughout the comments, MEMA will use the DOL-WHD term "parts producers" interchangeably with the industry's more commonly used term of "parts suppliers.")

About Vehicle Parts Suppliers (Parts Producers) and the Supply Chain

The vehicle industry depends on a strong, functioning North American supply chain, which is highly interdependent and integrated. In addition to fostering global competitiveness, the regional certainty of USMCA endeavors to encourage continued U.S. investments in parts suppliers' advanced technology development and production. Vehicle suppliers manufacture materials, parts, and systems for a wide range of customers, including new vehicle manufacturers. The first figure on the next page (sourced with permission from IHS Markit) illustrates the interconnectedness of the North American supply base and their vehicle manufacturer (a.k.a. OEM) customers. For example, looking at General Motors, this chart shows that GM shares 76 percent of suppliers with Ford Motor Company. OEM after OEM show significant percentages of shared supply base for their vehicles. This chart underscores the interconnectedness and interdependency of our industry and the North American region.

A typical vehicle contains more than 30,000 components. MEMA members produce a wide array of vehicle parts, subcomponents, and materials necessary to support the millions of vehicles manufactured each year in North America. Vehicle suppliers manufacture essential parts – such as axles, steering wheels, brakes, tires, wheels, batteries, wire harnesses, seats, lighting systems, dashboards, consoles, bearings, oil filters, fluids, plastics, metals, composites, and thousands more.

⁴ Rules of origin trilaterally agreed upon and contained in Appendix A to part 182 of title 19 of the Code of Federal Regulations (CFR); amended July 6, 2020 <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/free-trade-commission-decisions/annex-i>

Vehicle suppliers also innovate and manufacture complex and highly integrated vehicle systems – such as alternative propulsion systems, advanced driver assistance systems, vehicle-to-vehicle communications, automated driving systems, regenerative braking technologies, advanced refrigerants and HVAC systems, emissions control technologies, and many more.

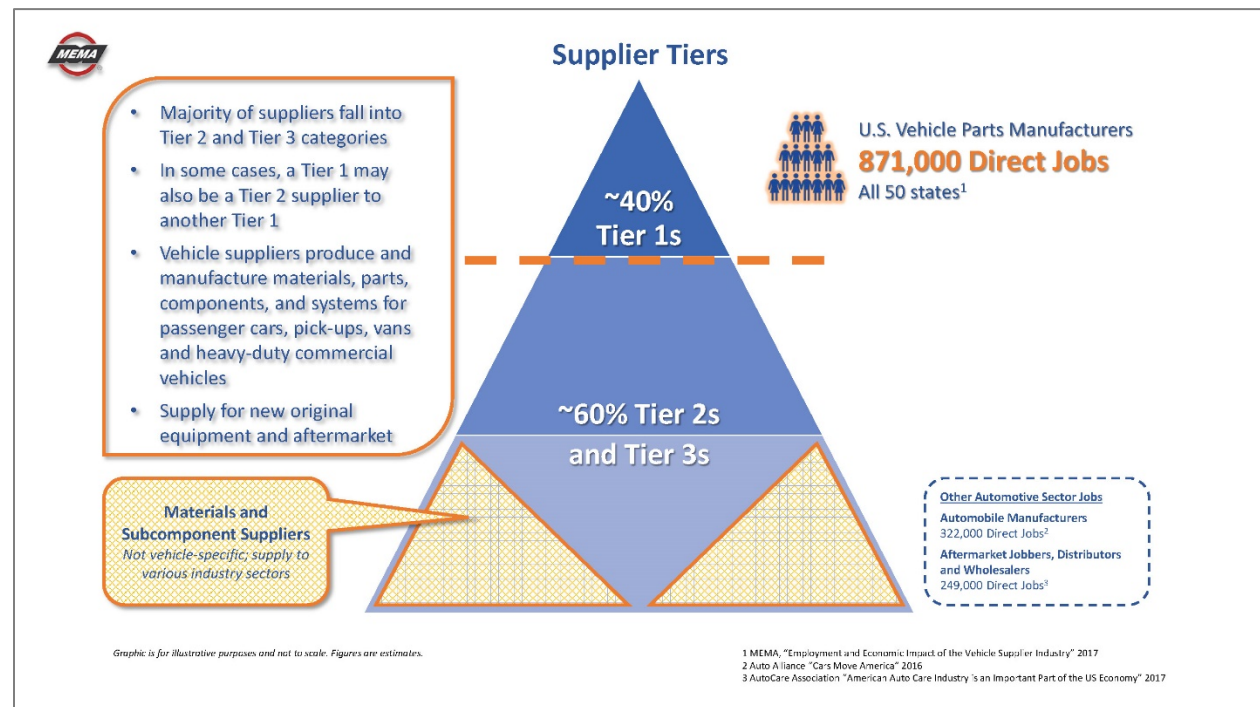
Vehicle suppliers are generally categorized in tiers, as illustrated in the second figure. Tier 1 manufacturers provide new OE finished parts, components, and systems directly to their vehicle manufacturer customers. Tier 2 manufacturers are often niche or specialty component manufacturers

North American Supply Base Interdependence

OEM Supply Base for NA Vehicles	Also supply to									
	GM	Ford	FCA	R-N-M	Honda	Toyota	Hyundai/Kia	VW	Daimler	BMW
GM	100%	58%	61%	47%	41%	29%	32%	47%	42%	44%
Ford	76%	100%	66%	50%	49%	30%	35%	50%	46%	49%
FCA	72%	60%	100%	51%	46%	32%	32%	46%	49%	47%
R-N-M	64%	52%	59%	100%	60%	40%	28%	50%	44%	39%
Honda	60%	55%	56%	65%	100%	45%	32%	49%	41%	41%
Toyota	56%	44%	51%	56%	59%	100%	25%	40%	32%	33%
Hyundai/Kia	54%	46%	46%	36%	37%	23%	100%	39%	31%	36%
VW	72%	59%	59%	56%	51%	32%	35%	100%	60%	64%
Daimler	66%	55%	64%	51%	45%	26%	29%	62%	100%	61%
BMW	80%	68%	71%	52%	52%	32%	38%	76%	70%	100%

Source: IHS Markit North American Component Forecast Analytics (CFA) as of 2017 calendar year. IHS Markit CFA tracks the supply of 90+ major light vehicle components/systems sourced from over 280 Tier 1 suppliers.

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that provide subcomponents and other content to Tier 1 manufacturers. Tier 3 companies are typically the suppliers of raw or semi-finished materials, such as metals or plastics, for both Tier 1 and 2 suppliers. Often, Tier 2 and 3 suppliers may also provide products and supply customers in other industry sectors outside of the vehicle industry (such as, computer chips, PCB boards, sensors, cameras, metals, glass, plastics, and chemicals). In the figure below, MEMA generally estimates that approximately 40 percent of vehicle suppliers are Tier 1 and about 60 percent are Tier 2 and 3. (The dashed line indicates the frequent crossover of suppliers that may be a Tier 1 to several vehicle manufacturers, but also may be a Tier 2 supplier to a Tier 1.)

Implications of LVC Requirements on Vehicle Parts Suppliers (Parts Producers)

As the Department explains in the IFR, the implementing legislation⁵ “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”⁶ of the LVC requirements. Further stating, “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 ...”⁷ Thus, there are aspects of the LVC requirements that may impact many parts suppliers, despite the fact that parts suppliers are not the party subject to the LVC requirements.

The USMCA is clear that the LVC requirements apply to the vehicle producer, which is the party responsible for the overall vehicle manufacturing process and would apply to receive preferential tariff treatment for a vehicle. However, the USMCA does not contemplate applying the LVC requirements to parts suppliers because parts suppliers have a discrete role in the vehicle manufacturing process and, consequently, would not apply for preferential tariff treatment for vehicles. Because of these reasons, MEMA urges the Department to include language in the Preamble of the DOL-WHD final regulation that more fully addresses the implications on vehicle parts suppliers (parts producers). Such language can reinforce the applicability of elements of the regulation to either the vehicle producers or the parts producers or both.

The intent of the LVC methodology was designed to incentivize North American vehicle producers to use their own vehicle assembly labor and self-produced parts to meet the LVC requirement. However, recognizing that this would not be possible in all cases, the USMCA structured the LVC requirement such that a vehicle producer may need to utilize “the Annual Purchase Value of purchased parts or materials”⁸ in their calculations. This intent is further reinforced under the Uniform Regulations at Section 18, subparts (7) and (8), that suggest the order in which the vehicle producer calculate the high-wage material.⁹ Lastly, the IFR preamble makes it clear that only the vehicle producer “of the covered vehicle may provide certification that the

⁵ “United States-Mexico-Canada Implementation Act” signed into law January 29, 2020.

⁶ 85 Fed Reg at 39782.

⁷ *Ibid.*

⁸ USMCA Chapter 4, Appendix Provisions Related to the Product-Specific Rules of Origin for Automotive Goods, Article 7, footnote 76: “These parts or materials include parts or materials used in the production of a vehicle or in the production of an auto part or material that is used in the production of an intermediate or self-produced part that is used in the production of a vehicle.”

⁹ USMCA Uniform Regulations for Rules of Origin, [Annex I](#), Part VI, Section 18, July 2020.

covered vehicle meets the applicable LVC requirements.”¹⁰ Although the vehicle producer is obviously the party subject to the LVC requirement, what is less obvious are the implications of the LVC requirements on parts producers. As a result, some elements of the LVC are essentially *de facto* requirements imposed on suppliers, such as recordkeeping.

Despite the intent behind the LVC requirement, MEMA remains concerned that North American vehicle producers will instead want to use more of the value from vehicle suppliers’ parts made with high-wage labor to boost their LVC compliance. Adding a broad labor “content” requirement down to parts suppliers is contrary to the intent of the LVC provision. MEMA is also concerned that vehicle producers may go beyond their direct parts producer and request them to seek out parts/materials made with high-wage labor from the direct parts producer’s sub-suppliers. Again, as stated earlier, the primary intent of the LVC requirement is for the vehicle producer to use the value of its own assembly and/or its self-produced parts. A secondary intent is to permit the vehicle producer to use the value of a part acquired from a parts producer that used high-wage labor in the production of that part. The USTR, at several MEMA briefings and events in 2018 and 2019, assured the audience that it was their expectation – based on their consultations with other vehicle industry stakeholders – that many vehicle producers would be able to meet the LVC on their own. USTR also indicated that while there would be some vehicle producers that would need parts producers to meet the LVC, since the entire purchase value of parts can be used to meet the LVC, there will not be a need to go beyond their direct parts producer to obtain this information from other suppliers (which USTR believed would be the case in most circumstances).

Considering these concerns and potential misunderstandings of the LVC requirement, MEMA urges the DOL-WHD to clarify the limited purpose for which vehicle producers may use parts from their direct suppliers in their LVC calculations. If the Department includes a more “bright line” in its final regulation, it will assuage misunderstandings and misinterpretations.

MEMA requests the Department to include in the Preamble of the final regulation the following points outlining the limited conditions for parts producers’ information.

- A parts producer need only provide to the vehicle producer a statement as to whether a facility/plant of the parts producer meets the average base hourly wage rate of US\$16/hour.
- A parts producer has no obligation to provide to the vehicle producer other data or peripheral information related to the facility/plant (such as, the annual purchase value, or other wage or workforce related details).
- A parts producer should maintain any and all records to support such a statement where said records would be provided upon request from the DOL-WHD and U.S. CBP in the event the agencies conduct a verification.

When a vehicle producer intends to utilize parts made with high-wage labor in its LVC calculation, the parts producer determines that the part was made at a facility/plant with an average wage of US\$16/hour. In other words, it is a simple statement from the parts supplier whether a facility/plant meets the average high-wage rate. There is no further obligation beyond that.

Average Hourly Base Wage Rate and Implications of Temporary and Seasonal Workers

As described above, a parts producer may be requested by one or more of its vehicle producer customers to determine if the parts producer’s facilities/plants meet the average high-wage rate.

¹⁰ 85 Fed Reg at 39785.

For parts producers to make these determinations for their own facilities/plants, the requirements related to what can/cannot be counted are the guidepost by which parts producers will calculate the average wage rate for their facilities/plants. MEMA appreciates that the DOL-WHD took great care in the IFR to carefully describe the types of workers and how the rate must be calculated. The scope recognizes essential facility operations and reflects current manufacturing environments. In general, the types of work and workers involved in direct production as well as those workers involved in the operations and maintenance of the equipment used in production are explained well, and the applications are clear. There are, however, some instances that are not as clear as to whether and how parts producers would apply some types of work and workers.

For instance, MEMA is concerned about the treatment of temporary and seasonal workers to be the same as full-time workers, which appears in the Uniform Regulations as part of the definition for the term “average base hourly wage rate”¹¹ and is addressed in the IFR Section 810.120.¹² The Preamble to the IFR makes a generalization stating, “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.”

Parts suppliers typically go through a third-party agency (*e.g.* temporary employment agencies) for temporary/seasonal workers. While there may be exceptions, parts suppliers are not likely to have knowledge about, or the ability to obtain, specific wage information for external employees that are contracted via a third-party agency. The third-party agency recruits, interviews, tests, screens, and ensures compliance with any legally required pre-employment obligations. The third-party agency assumes full responsibility for paying, withholding, and transmitting payroll deductions, premiums, taxes, and fees per the federal, state, and local laws. The third-party agency is responsible for all duties related to hiring, discipline, monitoring quality performance, reassignment, and termination. Thus, the temporary/seasonal worker is solely the common lawful employee of the third-party agency and is not entitled to employment benefits provided by the contracting company (*i.e.* parts producer/supplier). All of this employment-related information associated with a temporary/seasonal worker belongs to the third-party agency, is confidential, and would not necessarily be disclosed to the parts supplier as part of the contractual relationship between the parts supplier and the third-party agency.

MEMA is also concerned that the producer will be considered a joint employer of temporary/seasonal workers hired through a third-party agency if the producer receives specific wage information related to temporary/seasonal workers from the third-party agency. The contractual relationship between parts suppliers and third-party agencies is typically carefully structured to ensure that the temporary/seasonal workers are the exclusive common law employees of the third-party agency as a result of the third-party agency taking on all responsibilities associated with being an employer. If suppliers receive specific wage information related to the temporary/seasonal workers, the balance of control over the temporary/seasonal workers is arguably altered because it could be asserted that the third-party agency no longer has sole responsibility for the temporary/seasonal workers’ wages.

The DOL itself recognizes this risk. For example, in its revised Fair Labor Standards Act joint employer regulation, 29 CFR § 791.2, issued earlier this year, the DOL identified the maintenance of

¹¹ USMCA Uniform Regulations for Rules of Origin, [Annex I](#), Part VI, Section 12(1), July 2020.

¹² 85 Fed Reg at 39788.

employment records, which are defined to include payroll records, as one of the four factors that would suggest that a joint employment relationship exists.¹³

The final regulation should specify that parts producers are not required to include temporary or seasonal workers in their calculation of the average hourly base wage rate for parts-producing facilities/plants. If this request cannot be accommodated, MEMA urges DOL-WHD to specify in the regulations that if the parts producer exercises due diligence to acquire that information but circumstances prevent the acquisition of it (*e.g.* third-party will not provide specific, confidential information), then the parts producer has the latitude to use reasonable methods to approximate the average wage rate for the temporary and seasonal workers they utilize. The Department needs to recognize that the parts producer may not always have this exact information and, therefore, cannot confirm or be responsible for precise information.

If DOL-WHD does not provide an accommodation for these circumstances, parts producers will face significant additional compliance and data-gathering burdens associated with having to attempt to acquire confidential information from a third-party. Even if the supplier could access, track, and count the external temporary and seasonal employees they utilize, it would be a significant regulatory compliance burden for an element of the ROO that does not even directly apply to them. Again, the LVC requirement imposes a *de facto* recordkeeping burden on parts producers, the party that is not subject to the LVC requirement.

Needed Interpretations on Certification, Verification, and Recordkeeping Requirements that Impact Suppliers

As MEMA established, if a vehicle producer utilizes the value of parts made with high-wage labor in its ROO LVC compliance, the requirements for certification, verification, and recordkeeping also impact parts producers.

Plant/Facility Information – DOL-WHD requires the vehicle producer’s name, address, federal identification number or an alternative unique identification number at the producer’s choosing or an identification number used by the U.S. CBP, and a point of contact for each plant or facility the producer of the covered vehicle is relying on to meet the LVC requirement. In the Preamble to the IFR discussion of § 810.405(a)(4), DOL-WHD states it will review this information including:

“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.”¹⁴

MEMA is concerned that parts producers may be requested to provide vehicle producers with information that is not normally provided as part of the vehicle producer-supplier relationship. In addition, MEMA is concerned that parts producers may also be asked to share sensitive, confidential, proprietary information with vehicle producers – even though MEMA understands that parts producers may provide vehicle producers with sufficient information for the vehicle producers to satisfy their LVC reporting requirements and for the DOL-WHD to verify the wage information. MEMA is especially concerned that specific confidential information about the

¹³ “Joint Employer Status Under the Fair Labor Standards Act” Final Rule, 85 Fed Reg at 2820.

¹⁴ 85 Fed Reg at 39792.

facilities/plants of parts suppliers could become subject to public disclosure. Therefore, in the final rule, DOL-WHD must reinforce the limited role of the parts producer.

Responsibility for Records and Recordkeeping Requirements – With respect to the certification requirements in § 810.405, the Preamble of the IFR indicates that the records are kept to support a vehicle producer’s compliance and that 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.” In addition, the Preamble to the IFR states that the producers are responsible for providing that information (during a verification) “to the Department upon request” but that the records “may be physically maintained by a parts supplier or contractor” and they will accept those records “directly from a parts supplier or contractor, if, for example, the producer contracted for such an arrangement.”

MEMA interprets this to mean that parts producers are only required to provide records directly to the DOL-WHD if the Department is conducting a verification of a vehicle producer, and only if the vehicle producer included the value of high-wage manufactured parts and materials from a facility/plant of a parts producer for its LVC compliance. The DOL-WHD should confirm that the interpretation of MEMA is consistent with the intent of § 810.405 and that suppliers may directly provide records to the DOL-WHD in the absence of a contractual arrangement with the vehicle producer upon DOL-WHD’s request.

However, there is language in other portions of the Preamble to the IFR that appears to be inconsistent with the intent of the LVC provision, as understood by MEMA. Unless clarified, there are significant regulatory and commercial implications on suppliers.

§ 810.505 states 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.”

Even though the records may be physically maintained by a parts supplier or contractor and may be provided directly from a parts supplier or contractor to the DOL-WHD, MEMA seeks confirmation that suppliers can maintain their own records at their own facilities. Furthermore, MEMA requests confirmation that parts producers will only present the records to DOL-WHD and U.S. CBP upon direct request in the context of a verification proceeding. MEMA is concerned that this language is an opening to enable vehicle producers to demand records, information, and data from a parts supplier that is beyond the statement as to whether a part was manufactured at a high-wage facility/plant. The language in § 810.505 could be interpreted as providing that if a parts supplier is in a contractual arrangement with a vehicle producer then the vehicle producer may seek to access information beyond the parts supplier’s statement.

Again, MEMA asserts that any information beyond the parts producer’s statement is well beyond not only the intent and scope of the LVC provision, but also the type of information shared between parts suppliers and vehicle producers as part of the vehicle producer-supplier relationship. Moreover, providing vehicle producers with additional parts producer information and data beyond whether the facility/plant meets the high-wage average would have unintended consequences on the vehicle producer-supplier relationship. Again, the vehicle supply chain is highly interdependent; parts suppliers provide components and systems to multiple vehicle producers. It is imperative, for fair competition reasons, that there is recognition of the implications § 810.505 could have on the supply base. The information is sensitive; vehicle producers, or other competitors, can use the information to either award contracts or leverage existing contracts.

Period of Retention - § 810.600(d) indicates that records must be kept for five years from the date of importation of any vehicle for which the preferential treatment was claimed, and exporters and producers must ensure that records are kept for five years from the date on which the certification of origin was completed. The producer must either have or be able to produce the records upon request within a 30-day timeframe. MEMA seeks clarification for how some, if not all, of these timelines apply to parts suppliers. Naturally, suppliers will follow the record retention five-year timelines as guideposts. For clarity, MEMA requests that the current IFR language is revised in the final regulation to provide that DOL-WHD will directly notify any parts producer listed in vehicle producer's certification and provide the parts producer 30 days to present the requested records to the DOL-WHD. Therefore, MEMA recommends DOL-WHD make the following revision to § 810.600(c) (noted by double-underline):

“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 vehicle producer and/or a parts producer or contractor. 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.”

A parts producer should itself maintain all records to support a statement whether a plant/facility meets the high-wage average. Those records would be provided, upon request from the DOL-WHD and U.S. CBP, directly to the government agency in the event the agencies conduct a verification.

Underestimated Costs of Regulatory Burden

For the purposes of the IFR, the Department quantified two direct costs to producers – regulatory familiarization and recordkeeping – and qualified “other potential costs” as described in the IFR in Section V. The Department further notes that most of the expenses would be for upfront, “Year 1” costs as companies prepare for new requirements. For vehicle producers, the aggregated costs for Year 1 are estimated to be \$367,000, across 276 firms, for an average cost per firm of \$1,300. For parts producers, the estimated aggregated costs across 4,723 firms for the first year is \$6.2 million, with an average cost per firm of \$1,308. Then, DOL-WHD presumes that “[i]f 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.”¹⁵ Next, DOL-WHD estimates the time for “regulatory familiarization” would be 2.5 hours and 1.5 hours, per firm, for vehicle and parts producers, respectively. For recordkeeping, the estimate is 26 hours annually, per firm, for both vehicle and parts producers.

Unfortunately, the IFR estimates do not reflect the vehicle industry or the vehicle manufacturer-parts supplier dynamic and, therefore, are significantly understated. The DOL-WHD did not consider that these kinds of costs are rarely passed on from a parts supplier to their vehicle manufacturer customer. Similarly, while MEMA recognizes that the scope of the costs evaluated by the DOL-WHD is limited to just this rulemaking, there are “other potential costs” that should be considered and weighed. For instance, the other elements of the USMCA ROO, which is significantly

¹⁵ 85 Fed Reg at 39803.

more extensive as compared to the NAFTA, should be addressed as part of the overall concurrent and additive burden on vehicle and parts producers alike. Beyond the LVC, and as described in the next paragraph, the new ROO under USMCA will require intensive training and implementation costs throughout the supply chain.

Even though suppliers are not the party subject to the LVC requirement, parts suppliers, as previously explained, will still bear significant costs because of this rulemaking. Parts suppliers, particularly those with high-value parts, will need to run a high-wage average analysis for their facilities/plants, provide a statement to multiple vehicle manufacturer customers, and establish and maintain recordkeeping systems that support their assessment. For all producers, the solicitation process under the new USMCA will be more complex than under the NAFTA. New processes and systems will need to be established and integrated in order to assess, generate, collect, and convey the information to their customers. Also, companies will need to engage departments that are not traditionally involved in trade matters (*e.g.* human resources). Establishing new processes and creating training forums are added resources on already resource-constrained companies – large or small. This is particularly challenging for small- and medium-sized OE parts producers, which typically do not have internal dedicated trade compliance teams and/or legal resources to navigate the implications of this rulemaking.

Therefore, MEMA disagrees with the presumptions of the DOL-WHD burden determinations. Based on preliminary discussions with MEMA member companies, the DOL-WHD assessment of the producers' annual costs and annual hour burdens per firm are significantly underestimated. As an example regarding regulatory familiarization, over the past few weeks, MEMA has convened multiple calls averaging 90 minutes each with our member companies and is in the process of organizing training webinars for our member companies in the fall to educate them on the implications of this IFR. Unfortunately, several factors – such as the mid-year entry into force of USMCA and the broader industry and manufacturing disruptions due to the global pandemic – have impacted our members' ability to fully evaluate these burden impacts in time for the DOL-WHD comment deadline for this IFR. As such, MEMA would like the opportunity to provide DOL-WHD with information to support our member companies' intuitive concerns about time and cost burdens presented in the IFR. However, that will not be possible until the companies have had more time to digest the information. MEMA will endeavor to survey our members and submit follow up supplemental information to the DOL-WHD in the coming weeks. Through transparent dialogue, MEMA anticipates there will be opportunities for ongoing refinement and clarifications on this matter.

Conclusion

MEMA appreciates the DOL-WHD's consideration of these comments. Indeed, there are aspects of the LVC requirements that may impact many suppliers, even though suppliers are not the party subject to the LVC requirements. Thus, the LVC requirement imposes a *de facto* burden on parts producers. As such, MEMA urges the DOL-WHD to clarify the limited purpose for which vehicle producers may use parts from their direct suppliers in their LVC calculations. As previously stated, incorporating the following points into the final regulation are key clarifications:

- A parts producer need only provide to the vehicle producer a statement as to whether a facility/plant of the parts producer meets the average base hourly wage rate of US\$16/hour.
- A parts producer has no obligation to provide to the vehicle producer other data or peripheral information related to the facility/plant (such as the annual purchase value or other wage or workforce related details). Much of this information is business confidential

and proprietary, and as such cannot be shared by parts suppliers with their vehicle producer customers.

- A parts producer should maintain any and all records to support such a statement where said records would be provided upon request from the DOL-WHD and U.S. CBP in the event the agencies conduct a verification.

Also, MEMA urges DOL-WHD to allow for reasonable accommodations for parts producers regarding information-gathering from third-party temporary or seasonal employment agencies. Regarding the inspection of records requirements, MEMA strongly recommends a modest, but important, clarification edit to the regulatory text at § 810.600(c). Lastly, MEMA recommends that the DOL-WHD reassess their regulatory burden analysis, which is significantly underestimated.

Making these changes to the final regulation will mitigate misinterpretations and provide important clarity for vehicle and parts producers alike. For more information, please contact Ann Wilson, senior vice president of government affairs at awilson@mema.org or Leigh Merino, vice president of regulatory affairs at lmerino@mema.org.

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