

SUPPORTING STATEMENT U.S.-MEXICO-CANADA TRADE AGREEMENT

This is a new ICR being submitted for the information collected as a result of the U.S.-Mexico-Canada (USMCA) Trade Agreement. The ICR is being submitted in conjunction with the publication of an interim final rule: High-Wage Components of the Labor Value Content Requirements under the United States-Mexico-Canada Agreement Implementation Act (RIN 1235-AA36). The Department requests **emergency processing and approval** of this new information collection.

A. Justification

1. Circumstances Necessitating Information Collection

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. The U.S.-Mexico-Canada (USMCA) Trade Agreement replaces the 1994 North American Free Trade Agreement. The USMCA was ratified by all three countries, with the final ratification taking place by Canada, on March 30, 2020. The Preamble to the USMCA states that the Parties 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.”

The purpose of the USMCA Implementation Act is to implement the USMCA. Section 202A of the Act in part implements Article 7 of the Appendix to Annex 4-B of the USMCA. This Article establishes “labor value content” (“LVC”) requirements 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. Section 202A(c) of the USMCA Implementation Act requires that to receive preferential tariff treatment, a producer of a covered vehicle must file a certification demonstrating that the production of the covered vehicle meets the high-wage components of the LVC requirements. The certification will be collected by U.S. Customs and Border Protection (CBP) and provided to Wage and Hour Division of the Department of Labor (WHD) for review. The Act authorizes the Secretary of Labor (“Secretary”) to check the certification for omissions and errors and to verify whether a covered vehicle is in compliance with the high-wage components of the LVC requirements. This interim final rule (“IFR”) implements the Act’s requirements and establishes procedures for producers concerning the high-wage components of the LVC requirements.

The Department of Labor (“Department”) is charged with promulgating regulations. The regulations accompanying this information collection are issued in accordance with section 210(b) of the Act, and establish the rules necessary for the Department to carry out its role in enforcing the high-wage components of the LVC requirements under section 202A.

The Act also empowers the Secretary, in connection with its role in verifying compliance with the high-wage components of the LVC requirements, to examine records and collect information as may be relevant with respect to that verification. All verifications are based on the producer’s ability to substantiate the claims it has certified. The evidentiary burden will be on the producer to do so. The Administrator of the Wage and Hour Division shall perform all of the Secretary’s certification verification functions under Articles 4 and 5 the USMCA and sections 202A(c) and 202A(e) of the USMCA Implementation Act. Article 5.8 of the USMCA authorizes USMCA countries to require importers, exporters, and producers to maintain records necessary to demonstrate the validity of certifications of origin. Such 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.

Section 206(b)(4) of the Act requires importers who claim preferential tariff treatment under the USMCA for a good imported into the United States from a USMCA country to make, keep, and pursuant to rules promulgated by the Secretary and to render for examination and inspection records and supporting documents related to the LVC content requirements. Section 202A(e)(4)(B) of the Act further grants the Secretary authority, which has been delegated to the Administrator, to request any records related to wages, hours, job responsibilities, or any other information in any plant or facility relied on by the producer of covered vehicles to demonstrate that such production of those vehicles meets the high-wage components of the LVC requirements.

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 the Department enforces. (See 19 U.S.C. 4532(c)(1)(A)); 202A(c)(1)(A) of the Act.) The Secretary (in consultation with CBP) must ensure that the 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)); 202A(c)(1)(B)(i) of the Act.)

2. Use

This information collection requires certain data to be maintained and/or produced upon request (recordkeeping requirement).

WHD staff will use the records provided by the employer in carrying out the high-wage components of the LVC requirements, as set forth in the Agreement between the United States of America, the United Mexican States, and Canada.

The recordkeeping obligations of importers, exporters, and producers of covered vehicles is necessary to demonstrate compliance with the high-wage components of the LVC requirements. The regulations specify records that must be preserved and maintained. The 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 premium pay or other similar payments have been properly excluded from that calculation.

As noted above, 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 content components of the LVC requirements that the Department enforces. The CBP will submit the PRA package for collection information related to the certification.

3. Technology

No particular form or order of records is prescribed to demonstrate the exemption. The Department will examine the records provided by the employer in the format provided. However, pursuant to paragraph 3 to Article 5.8 of the USMCA, the records must be in a form or format that allows the records to be promptly retrieved and printed.

4. Duplication

This information collection duplicates some existing WHD requirements. These regulations note that under 29 CFR 516.2, employers subject to the Fair Labor Standards Act (FLSA) are required to keep hours worked records and employee information. This collection of information is approved under OMB control number 1235-0018(in other words, most employers are already subject to the recordkeeping requirements under the FLSA so this will not add new burden to them for the same requirements). This already approved collection requires that records be maintained and so this will not change the burdens form most employers. However, the Department accounts for some additional burden in this collection for any workers who are not subject to the FLSA.

5. Minimizing Small Entity Burden

While this information collection does not have a significant economic impact on a substantial number of small entities, it infrequently involves small businesses. Information requested by this information collection is not available from any other source.

6. Consequence of Failing to Collect and Obstacles to Reducing Burden

Respondents could potentially lose the ability to claim preferential tariff treatment if they fail to submit a timely and complete certification. The certification data will be collected by CBP and reviewed by WHD.

Respondents are asked to provide records relevant to this information collection only when the WHD seeks to enforce the law it is charged with administering. WHD anticipates that the majority of compliance actions to enforce the USMCA regulations will be initiated through referrals from CBP.

7. Special Circumstances

There are no special circumstances associated with this collection.

8. Public Comments

The Department is publishing an IFR associated with this collection. The Department has invited public comment on all aspects of the IFR including the information collection contained herein. The Department submitted a request for emergency processing of this collection with a requested six-month expiration. Following receipt of the OMB's Notice of Action, the Department plans to publish notice in the Federal Register inviting public comment on the Department's request to extend approval for the collection. However, the public is invited to comment during the interim final rule comment period as well. Any comments received during both the interim final rule comment period and the subsequent notice to extend the collection will be addressed and submitted in the Department's subsequent submission to OMB requesting extension of the collection.

9. Payment or Gifts to Respondents

The DOL offers no payments or gifts to respondents.

10. Assurances of Confidentiality

Information gathered during the course of an investigation of a complaint is disclosed only in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. section 552; the Privacy Act, 5 U.S.C. section 552a; and attendant regulations, 29 CFR parts 70 and 71. The FOIA provides an exception from its disclosure requirements for records or information compiled for law enforcement purposes to the extent that release of the information could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis. 5 U.S.C. section 552(b)(7) (D).

11. Sensitive Questions

The Department asks no sensitive questions in this information collection.

12. Estimated Annual Respondent Burden Hours

The regulations impose burdens on employers with recordkeeping requirements. The recordkeeping requirements are contained within 29 CFR 810.600.

As explained in 29 CFR 810.600(e), producers must maintain certain records for all workers subject to the Fair Labor Standards Act recordkeeping requirements found in 29 CFR 516.2. These obligations and burdens are reported and approved under existing collection OMB control number 1235-0018. This will cover most workers. However, as explained in paragraph (e), producers must maintain these same records for workers who have performed direct production work but who are exempt from FLSA recordkeeping requirements (for example, an employee who meets the part 541 minimum wage and overtime exemption). This will be a small group of workers, however, the Department provides a modest estimate to capture any additional burden for these workers. The same burden that is used for the approved collection in 1235-0018 will be used here for the estimate. These records are described in (e)(1-3) and include the name of the worker, total number of daily and weekly hours worked by each worker, and records of earnings (including payroll records showing the date wages were paid and the time period covered by wage payments, each worker's hourly rate of pay and basis of pay, total daily or weekly straight-time earnings, premium pay records, and any deductions from pay).

The Department estimates that ten percent of affected respondents will have at least one employee who will not otherwise be covered by the above mentioned FLSA recordkeeping requirements.

$6,140 \text{ establishments} \times 10\% = 614 \text{ employer respondents}$

$614 \text{ respondents} \times 26 \text{ annual responses} \times 2 \text{ min. per response} = 31,928 \text{ minutes}$

$31,928 \text{ minutes} \div 60 \text{ min per hour} = 532 \text{ burden hours}$

Under 29 CFR 810.600(e)(4), producers are also required to keep records of any collective bargaining agreement, written agreements or memoranda, individual contracts, trusts, plans, employment contracts, or understandings applicable to any workers who work in direct production. Such agreements will assist the Department in establishing the average hourly base rate.

The Department used the same estimate it uses in the Service Contract Act collection approved by OMB under OMB control number 1235-0007. This is a total of five minutes per agreement. The Department estimates the number of respondents to be 276. (See Table 3 of the interim final rule.) The Department further estimates that each respondent will have two of the records contained within the list which they must maintain.

$276 \text{ respondents} \times 2 \text{ response each} = 552 \text{ responses}$

$552 \text{ responses} \times 5 \text{ min} \div 60 \text{ min per hour} = 46 \text{ burden hours (2,760 min/60 min per hour)}$

Further, 29 CFR 810.600(e)(5) requires a record to be maintained of all hours worked in direct production. The record must include the worker's name, type of direct production work performed, hours worked, hourly base wage rate paid to each worker in direct production hours worked, and total wages paid. Where workers perform at least 85% direct production work in total work hours, a record may be kept merely of those workers' total hours worked during the relevant time period used for certification, 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.

The record of direct production work performed (a subset of hours worked) is not among existing requirements for those workers subject to the FLSA. For many direct production workers, all the hours worked are direct production hours and so the employer need only keep the total hours worked used for certification as described above. However, for those who have variations in their work assignments, a new recordkeeping requirement exists. The Department estimates that 25 percent of the respondents (establishments) may need to adhere to the new recordkeeping requirement for a total of 221,515 workers (25 percent of workers from Table 1 of the RIA) and estimates 2 additional minutes per response and 26 times per year.

Respondents: 1,535 (See Table 1 of RIA for source data)
Responses: 5,759,390 (221,515 workers × 26 times annually (See Table 1 of RIA for source data))
Burden hours: 191,979

In 29 CFR 810.600(e)(6), the Department requires that importers, exporters, and producers maintain records demonstrating the transportation and related costs, logistics, or material handling service providers paid to workers directly involved in the transportation of the part or components, such as drivers and loaders. Such records may include contracts with the shipping provider, collective bargaining agreements entered into by the shipping company, and other similar indications of the wages paid to these workers.

The Department believes that businesses would keep such records as part of their normal good business practice and for budgeting purposes. However, in order to account for the requirement that the records be maintained, the Department estimates a unique burden of 2 hours annually per respondent.

6,140 respondents × 1 response = 6,140 responses
6,140 responses × 2 hours per response = 12,280 burden hours

Respondents: 6,140
Responses: 6,140
Burden Hours: 12,280

29 CFR 810.600(f) requires any importer, exporter, or 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 as defined by the regulations.

The Department believes that these wages paid records are captured in the collection 1235-0018 and above. However, in order to parse out the wages paid for research and development or for information technology work, the Department estimates an additional unique burden.

The Department estimates that CBP will provide WHD (approximately 1,380 certification responses submitted by producers). The Department estimates an additional burden of 2 minutes to process the data for an average of ten workers.

1,380 certifications × 10 workers = 13,800 responses
 13,800 × 2 minutes = 27,600 minutes
 Burden Hours = 460

As explained in 29 CFR 810.600(g), if a producer relied on any additional records not listed in (e) to support its calculations establishing that the average hourly base wage rate is at least \$16 per hour for each plant or facility the producer relied upon to meet the LVC requirements, then the producer must also maintain those additional records.

The Department estimates that most employers will rely on the records described in (e) and (f) however, the Department offers that an estimated ten percent of producers may keep additional records. The Department estimates that ten percent of the affected producers will take approximately one hour to capture and maintain such records.

6,140 employers × 10 percent = 614 respondents at one response each.

614 responses × 60 minutes = 614 burden hours

TOTAL ESTIMATED ANNUALIZED RESPONDENT BURDEN AND COSTS

Citation	Respondents	Responses	Burden Hours
810.600(b)-(d)			
810.600(e)(1-3)	614	15,964	532
810.600(e)(4)	276	552	46
810.600(e)(5)	1,535	5,759,390	191,979
810.600(e)(6)	6,140	6,140	12,280
810.600(f)	276	13,800	460
810.600(g)	614	614	614

TOTAL	9,455	5,796,460	205,911
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Number of Respondents	Total Number of Responses	Total Burden Hours	Hourly Wage Rate*	Total Cost Burden
9,455	5,796,460	205,911	See below	\$7,816,382

*To estimate the cost of recordkeeping, the Department used the figure described in the RIA for a payroll/records clerk. This is a base rate of \$23.29 with the addition of 46 percent for benefits cost and 17 percent for overhead cost for a total rate of \$37.96.

205,911 records burden hours × \$37.96 = \$7,816,382. (rounded).

13. Estimated Annual Respondent Capital/Start-Up/Operation/Maintenance Costs

The Department estimates no capital/start-up/Operation/Maintenance costs.

14. Estimated Annual Federal Costs

While the Department of Labor will incur costs with a new enforcement program in training enforcement staff to respond to a different enforcement scheme. However, the Department does not have data to assess the cost to the Department for administering this new program.

The Department of Labor will incur costs associated with the review of certifications submitted by CBP’s respondents. The Department estimates that each certification will be reviewed by a Grade 13, step 4 federal worker. Each review will take approximately two hours.

1,380 annual certifications × 2 hours = 2,760 hours.

The Department utilizes the OPM salary table for federal workers in 2020 for the ChicagoNaperville, IL-IN-WI region. This amount yields \$53.33 per hour.

2,760 hours × \$53.33 per hour = \$147,191. (rounded)

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

This is a new law and the burdens reported here are new.

16. Publishing Data From Information Collection

The DOL does not publish the results of this information collection.

17. Display of OMB Approval Expiration

The DOL does not seek an exception to the requirement to display the expiration date on this information collection.

18. Exceptions to Certification Statement

The DOL is not requesting an exception to any of the certification requirements for this information collection. This request complies with 5 CFR 1320.9.

B. Employing Statistical Methods

Not applicable.