

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

This information collection request (ICR) is being submitted for the information collected as a result of the Agreement between the United States, Mexico,- and Canada . This ICR was previously 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 of Labor (Department) requested emergency processing and approval of this information collection at the time of publication of the rule. On July 2, 2020, the Office of Management and Budget (OMB) approved the Department’s emergency processing request and assigned OMB control number 1235-0032 with an expiration date of January 2021.

### **A. Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

On November 30, 2018, the Governments of the United States of America, the United Mexican States, and Canada signed the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (USMCA). The USMCA 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 13, 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 USMCA Implementation Act (the Act) implements 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 (collectively, covered vehicles), 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 Act requires that to receive preferential tariff treatment, a producer of a covered vehicle must file a certification demonstrating in part that the production of the covered vehicle meets the high-wage components of the LVC requirements. The certification will be filed with U.S. Customs and Border Protection (CBP) and provided to the Wage and Hour Division of the Department of Labor (WHD) for review. The Act authorizes the Secretary of Labor (Secretary), in conjunction with CBP, to check the

certification for omissions or errors and to verify whether a covered vehicle is in compliance with the high-wage components of the LVC requirements. The interim final rule (IFR) implemented the Act's requirements and established procedures for producers concerning the high-wage components of the LVC requirements.

The regulations associated with this information collection were issued in accordance with section 210(b) of the Act, and established the rules necessary for the Department to carry out its role in administering the high-wage components of the LVC requirements under section 202A.

The Act also empowers the Secretary, in connection with the Department's 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 (and the Administrator's designees) shall perform all of the Secretary's certification and verification functions under sections 202A(c) and 202A(e) of the Act. Article 5.8 of the USMCA requires USMCA countries (the United States, Mexico, and Canada) 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, and producers whose goods are subject to such a claim, to make, keep, and, pursuant to rules promulgated by the Secretary, render for examination and inspection records and supporting documents related to the LVC requirements. Section 202A(e)(4)(B) of the Act further grants the Secretary authority, which has been delegated to the Administrator, to request and examine 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 the production of those vehicles meets the high-wage components of the LVC requirements.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

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

WHD staff will use the records it receives to verify compliance with the high-wage components of the LVC requirements, as set forth in the USMCA.

The recordkeeping obligations of importers, exporters, and producers of covered vehicles are 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, a producer must certify that its production of covered vehicles meets the LVC requirements, including the high-wage components of the LVC requirements that the Department enforces. CBP will submit the Paperwork Reduction Act (PRA) package for collection of information related to the certification.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.**

No particular form or order of records is prescribed, provided that the producer can produce the specified records upon request for inspection, copying, and transcription. . The Department will examine the records provided by the employer in the format provided. 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. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.**

This information collection duplicates some existing WHD requirements. These regulations note that under 29 CFR 516.2, employers are required to keep hours worked records and other employee information for workers covered by the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA). This collection of information is approved under OMB control number 1235-0018. Most employers are already subject to the FLSA's recordkeeping requirements, and so many of the records required under the USMCA recordkeeping requirements will already be kept by employers to ensure compliance with the FLSA. However, the Department accounts for some additional burden in this collection for any workers who are exempt from the FLSA's recordkeeping requirements, as well as for records required under the Department's USMCA regulations that employers are not required to maintain under the FLSA.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have a significant economic impact on a substantial number of small entities. Information requested by this information collection is not available from any other source.

**6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Respondents could potentially lose the ability to claim preferential tariff treatment if they fail to provide records and information to WHD upon request.

Respondents are asked to provide records relevant to this information collection only when WHD seeks to enforce the law it is charged with administering.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law**

There are no special circumstances associated with this collection.

**8. Public Comments If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

- **Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

- **Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection-of-information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

The Department published an IFR associated with this collection on July 1, 2020 (85 FR 39782) and invited public comment on all aspects of the rule, including the PRA. 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 also published notice in the Federal Register inviting public comment on the Department's request to extend approval for the collection. This notice was published in the Federal Register on July 10, 2020 (85 FR 41627). The public was invited to comment during the IFR comment period as well as during the sixty day notice period. A few comments were received related to the recordkeeping requirements.

The American Automotive Policy Council (AAPC) asked that the Department consider extending the timeline for maintaining records from five years to six years. AAPC suggested that original equipment manufacturers may purchase components and store them for an extended amount of time. They also asked that the Department consider less burdensome alternative recordkeeping requirements in its final rule.

The Motor and Equipment Manufacturer's Association (MEMA) sought clarification on how the recordkeeping requirements apply to parts suppliers. MEMA requested a change to section 810.600(c) in the final rule to require the Department to notify any parts producer directly if requesting records for verification.

The Department notes that these commenters suggest revisions to the regulatory text. This can only be done through rulemaking and the Department will consider these comments when developing its final rule.

**9. Explain any decision to provide any payments or gifts to respondents, other than remuneration of contractors or grantees.**

The DOL offers no payments or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

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. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

The Department asks no sensitive questions in this information collection.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. General, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

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 FLSA 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 relatively small group of workers in the United States, 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 and other worker information, 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 such 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 agreements, 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.

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

$276 \text{ responses} \times 5 \text{ min} \div 60 \text{ min per hour} = 46 \text{ burden hours (2,760 min/60 min per hour)}$

Further, 29 CFR 810.600(e)(5) requires a record to be maintained of all hours worked in direct production. The record must include each worker's name, type of direct production work performed, hours worked by each worker in 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. Where at least 85% of a worker's total work hours are hours worked in direct production, 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 are not in direct production.

The record of direct production work performed (a subset of hours worked) is not among the existing requirements for those workers subject to the FLSA. For many workers who perform direct production work, all the hours worked are direct production hours and so the employer need only keep the total hours worked as described above. However, for those who spend less than 85% of their work hours engaged in direct production work, 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 wages their transportation, logistics, or material handling service providers paid to workers directly involved in the transportation of the part or components, such as drivers and loaders. This requirement applies if the importer, exporter, or producer is relying on high-wage transportation or related costs for shipping to meet its LVC requirements. Such records may include, for example, 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 often keep such records as part of their normal good business practices 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.

$6,140 \text{ respondents} \times 1 \text{ response} = 6,140 \text{ responses}$

$6,140 \text{ responses} \times 2 \text{ hours per response} = 12,280 \text{ burden hours}$

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.

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
<b>TOTAL</b>	<b>9,455</b>	<b>5,796,460</b>	<b>205,911</b>

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. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- The cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component.
- The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include,

**among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

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

**14. Estimated Annual Federal Costs. Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.**

While the Department will incur costs with a new enforcement program, including training enforcement staff to conduct USMCA verifications and time spent conducting such verifications,, the Department does not have data to assess the cost to the Department for administering this new program. For example, the Department does not yet know how many verifications it will conduct each year.

**15. Explain the reasons for any program changes or adjustments.**

The USMCA and its implementing legislation are new, and the burdens reported here are thus new.

**16. For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

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

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

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

**18. Explain each exception to the certification statement.**

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

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.**

Not applicable.