U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

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July 14, 2020

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Bobby Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Labor, Wage and Hour Division: High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Wage and Hour Division (Labor) entitled "High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act" (RIN: 1235-AA36). We received the rule on July 1, 2020. It was published in the *Federal Register* as an interim final rule on July 1, 2020, with request for comments on or before August 31, 2020. 85 Fed. Reg. 39782. The stated effective date of the rule is July 1, 2020. *Id*.

According to Labor, the interim final rule, in accordance with section 210(b) of the United States-Mexico-Canada Agreement Implementation Act (USMCA), provides regulations necessary to administer the high-wage components of the labor value content requirements as set forth in section 202A of the Act. Pub. L. No. 116–113, 134 Stat. 33 (Jan. 29, 2020). Labor stated that this interim final rule implements the Act's requirements and establishes procedures for producers to follow concerning the high-wage components of the labor value content (LVC) requirements. Labor further stated that any entity seeking preferential tariff treatment when importing covered vehicles into the United States must comply with the Department's regulations set forth in the rule, including for plants located in Mexico and Canada that it uses to satisfy the high-wage components of the LVC requirements.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its

reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although Labor did not specifically mention CRA's 60-day delay in effective date requirement, the agency found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. Labor stated that it has good cause for finding that the public notice and comment requirements are impracticable and contrary to the public interest, and thus should not apply to these regulations. According to Labor, the USMCA's LVC requirements, which the Department is tasked in part with enforcing, apply once the USMCA enters into force. Labor determined that these regulations establish procedures that the public must know by the entry-into force date in order to claim the benefit of a tariff preference under USMCA. According to Labor, the Uniform Regulations, which required the agreement of the United States of America, the United Mexican States, and Canada, were only adopted on June 3, 2020. Labor stated that these regulations, however, must be consistent with the Uniform Regulations and could not be completed and prepared for public notice and comment until the Uniform Regulations were adopted. Labor further stated that given the recent adoption of the Uniform Regulations and the approaching date on which USMCA enters into force, following public notice and comment procedures could prevent the implementation of these regulations by the entry-into-force date, leading to harmful consequences for stakeholders throughout the automotive industry. According to Labor, interested persons are invited to submit written comments on the interim final rule on or before August 31, 2020.

Enclosed is our assessment of Labor's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Robert Waterman
Compliance Specialist
Department of Labor

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
WAGE AND HOUR DIVISION
ENTITLED
"HIGH-WAGE COMPONENTS OF THE LABOR VALUE CONTENT
REQUIREMENTS UNDER THE UNITED STATES-MEXICO-CANADA
AGREEMENT IMPLEMENTATION ACT"
(RIN: 1235-AA36)

(i) Cost-benefit analysis

The Department of Labor (Labor) quantified two direct costs to businesses: (1) regulatory familiarization costs and (2) recordkeeping costs, using 2019 dollars. For the first year, Labor estimated that regulatory familiarization will cost $481,000 and recordkeeping will cost $6.060 million, totaling $6.542 million. Regarding the 10-year annualized cost at the 3 percent discount rate, Labor estimated regulatory familiarization to be $56,500 and recordkeeping to be $6.060 million, totaling $6.117 million. Regarding the 10-year annualized cost at the 7 percent discount rate, Labor estimated regulatory familiarization to be $8,600 and recordkeeping to be $6.060 million, totaling $6.129 million. The Department also discussed other non-quantifiable costs, including additional costs to manufacturers (setup costs and pay adjustment costs), consumer costs (increase in vehicle prices due to costs more immediately borne by foreign manufacturers, decrease in vehicle options), and Departmental costs (setup and enforcement costs to Labor). Regarding transfers, Labor determined that earnings transfers from automobile and automobile parts manufacturing companies to U.S. employees may occur if wages are raised to meet the high wage components of the labor value content (LVC) requirements in order to qualify for preferential tariff treatment. According to Labor, it has not quantified this potential transfer because (1) it is expected to be small and (2) there are data limitations, such as a lack of wage rates by firm or the labor share of value in production of parts or assembly of cars. Labor also provided qualitative benefits of the interim final rule, stating that the inclusion of the high-wage components in the LVC requirements may incentivize domestic investment, production, and employment, and the accompanying gain in producer surplus would qualify as a benefit.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Department certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. According to Labor, it used the Small Business Administration size standards to identify the number of businesses that are small entities. According to Labor, it estimated there are 4,835 small affected firms (97 percent of the total affected) and 5,218 small affected establishments (85 percent of the total). Labor stated that total costs to small businesses in year 1 are estimated to be $5.6 million (86 percent of total costs). This, Labor further stated, equates to an average of $1,162 per small firm ($1,165 for vehicle manufacturers and $1,161 for parts manufacturers). According to Labor, costs in subsequent years would be smaller because regulatory familiarization costs are limited to year 1. Labor stated that the impact of this rule was calculated as the ratio of annual cost per entity to average receipts per entity. Labor concluded that the annual cost per entity is less than 0.01 percent of average annual receipts. According to Labor, it also considered costs relative to

receipts for the smallest affected firms by both industry and size. Labor stated that even for the smallest firms (those with fewer than 500 employees), costs are well below 1 percent of receipts in year 1. These costs, according to Labor, assume single-establishment firms. Labor determined that costs would be somewhat higher for multi-establishment firms; however, multi-establishment firms are uncommon in these industries and size categories.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Labor determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, of $156 million ($100 million, adjusted for inflation) or more. However, Labor also determined that costs may reach this threshold for the private sector.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

Labor determined that the public notice and comment procedures are inapplicable to these interim regulations because they involve a ''foreign affairs function of the United States.'' According to Labor, the delay caused by public notice and comment procedures would prevent these regulations from being in place on the date that the United States-Mexico-Canada Agreement Implementation Act (USMCA) enters into force. Pub. L. No. 116–113, 134 Stat. 33 (Jan. 29, 2020). Labor stated that a failure to have the regulations in place setting forth the procedures implementing important rules for preferential tariff treatment of automobiles would provoke undesirable international consequences by inhibiting the execution of the United States' obligations under USMCA and creating international uncertainty about the United States' enforcement of tariff preferences. In addition, the Department stated that it has good cause for finding that the public notice and comment requirements are impracticable and contrary to the public interest, and thus should not apply to these regulations. According to Labor, USMCA's LVC requirements, which the Department is tasked in part with enforcing, apply once USMCA enters into force. Labor determined that these regulations establish procedures that the public must know by the entry-into force date in order to claim the benefit of a tariff preference under USMCA. According to Labor, the Uniform Regulations, which required the agreement of the United States of America, the United Mexican States, and Canada, were only adopted on June 3, 2020. Labor stated that these regulations, however, must be consistent with the Uniform Regulations and could not be completed and prepared for public notice and comment until the Uniform Regulations were adopted. Labor further stated that given the recent adoption of the Uniform Regulations and the approaching date on which USMCA enters into force, following public notice and comment procedures could prevent the implementation of these regulations by the entry-into-force date, leading to harmful consequences for stakeholders throughout the automotive industry. Furthermore, according to Labor, because these are interim regulations, the public will have an opportunity to comment and provide input for the final rule on or before August 31, 2020, reducing any impact from the lack of notice.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

Labor determined that this final rule contains information collection requirements under the Act. According to Labor, it has created a new information collection request and submitted the request to Office of Management and Budget (OMB) for emergency approval, entitled ''High-Wage Components of the Labor Value Content Requirements Under the USMCA'' (OMB control number 1235–0NEW).

Statutory authorization for the rule

Labor promulgated this final rule pursuant to sections 1508(b)(4) and 4535(b) of title 19, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

Pursuant to the Order, OMB's Office of Information and Regulatory Affairs has determined that this interim final rule is economically significant.

Executive Order No. 13,132 (Federalism)

Labor determined that this rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.