

SUPPORTING STATEMENT
WORKER INFORMATION—TERMS AND CONDITIONS OF EMPLOYMENT
REGULATIONS 29 C.F.R. §§ 500.75-.76
FORM WH-516
OMB CONTROL NO. 1215-0187

1. Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. § 1801 *et seq.*, require respondents [*i.e.*, Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs)] to disclose employment terms and conditions in writing to: (1) migrant agricultural workers at the time of recruitment [MSPA section 201(a)]; (2) seasonal agricultural workers, upon request, at the time an offer of employment is made [MSPA section 301(a)(1)]; and (3) seasonal agricultural workers employed through a day-haul operation at the place of recruitment [MSPA section 301(a)(2)]. *See* 29 C.F.R. §§ 500.75-.76. Moreover, MSPA sections 201(b) and 301(b) require respondents to provide each migrant worker, upon request, with a written statement of the terms and conditions of employment. *See* 29 C.F.R. § 500.75(d). MSPA sections 201(g) and 301(f) require providing such information in English or, as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. The DOL prints and makes Optional Form WH-516, Worker Information—Terms and Conditions of Employment, available for these purposes. *See* 29 C.F.R. §§ 500.75(a), 500.76(a).

MSPA sections 201(a)(8) and 301(a)(1)(H) require disclosure of certain information regarding whether State workers' compensation or state unemployment insurance is provided to each migrant or seasonal agricultural worker. *See* 29 C.F.R. § 500.75(b)(6). For example, if State workers' compensation is provided, the respondents must disclose the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. *See* 29 C.F.R. § 500.75(b)(6)(i). Respondents may also meet this disclosure requirement, by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed. *See* 29 C.F.R. § 500.75 (b)(6)(ii).

2. Form WH-516 is an optional form that allows respondents to disclose employment terms and conditions in writing to migrant and seasonal agricultural workers, as required by the MSPA. Respondents may either complete the optional form and use it to make the required disclosures to workers or use the form as a written reflection of the information workers may request from employers under the MSPA. Disclosure of the information on this form is beneficial to both parties in that it enables workers to understand their employment terms and conditions, while also providing respondents with an easy way to disclose the information required by the MSPA and its regulations.

3. In accordance with the Government Paperwork Elimination Act (GPEA), the DOL has posted Form WH-516 in both English and Spanish on the DOL Web site in a fillable and printable PDF format that allows respondents to enter the required information and provide it to recipients. See http://www.dol.gov/esa/forms/whd/Form_WH-516_English.PDF and http://www.dol.gov/esa/forms/whd/WH-516_Spanish.PDF. Please note, however, that while the WHD provides this form electronically, there is no particular format respondents must use to provide the information other than the MSPA requirement that it be furnished in writing under the circumstances discussed in Item 1. Therefore, the use of photocopies, computer-generated (*e.g.*, e-mail) or facsimile (fax) disclosures would also satisfy the requirements of the MSPA and its regulations. With respect to GPEA implementation, it should be noted that this form is a disclosure to a third party and not the government.
4. This information collection is not available from any other source; therefore, the collection duplicates no existing requirements.
5. This information collection does involve small businesses engaged in agriculture; however, it does not have a significant economic impact on a substantial number of small entities. While the MSPA and its regulations require respondent disclosure of employment terms and conditions, the use of Form WH-516—which offers an easy method for that disclosure—is optional. Small businesses are able to reduce their burdens by using Form WH-516.
6. The DOL has a statutory responsibility to ensure that FLCs, AGERs, and AGASs disclose employment terms and conditions to their migrant and seasonal agricultural workers, as required by the MSPA and its regulations. Less frequent disclosure would not constitute compliance with the statutory requirements.
7. There are no special circumstances associated with this information collection.
8. The DOL published a *Federal Register* Notice inviting public comments about this information collection. See (Vol. 72, 52166 on September 12, 2007). The agency has received no comments. In addition, regular agency contacts with respondents have not indicated the information collection imposes any substantive problems or undue burdens.
9. The DOL makes no payments or gifts to respondents of this information collection.
10. The DOL makes no assurances of confidentiality to respondents of this information collection. It is a third-part disclosure.
11. The DOL asks no sensitive questions in this information collection.
12. The MSPA applies to farms nationwide, with the exception of those farms meeting the criteria for one of the exemptions provided in MSPA section 4. Where the MSPA does not apply, there is no obligation to provide these disclosures. For example, MSPA section 4(a) (2) provides an exemption from the Act to farms that have used less than 500 man-days of hired agricultural labor during each calendar quarter in the preceding calendar year; consequently, a farm must effectively employ an average of more than five workers each calendar day in a quarter to reach the 500 man-day threshold for MSPA coverage. The most current estimate reflecting the number of farms that have hired five or more

agricultural workers during the survey year comes from the *2002 Census of Agriculture*.¹ That estimate indicates approximately 129,250 farms are subject to MSPA provisions. Moreover, the *2002 Census* also estimates the number of hired farm/agricultural workers, other than proprietors, to be approximately 2,248,400 (actual census numbers are 467,084 workers at farms reporting five to nine workers and 1,781,318 workers at farms reporting ten or more workers). Information derived from the findings from the most recent *National Agricultural Workers Survey* indicates that farm workers average 1.4 farm jobs each year (3,147,760 jobs). See DOL, Office of the Assistant Secretary for Policy, Office of Programmatic Policy, *Findings from the National Agricultural Workers Survey (NAWS) 2001-2002, A Demographic and Employment Profile of United States Farm Workers*, at 23, http://www.doleta.gov/agworker/report9/naws_rpt9.pdf. Please note, some of these workers may not be (1) migrant or seasonal workers or (2) employed on farms subject to MSPA. The total number of farm jobs, thus, may overestimate burden; however, the total number of farm jobs does provide an outer limit for estimating burden. A typical respondent, therefore, annually will make approximately 24 third-party disclosures under this information collection.

2,248,400 estimated workers x 1.4 farm jobs = 3,147,760 estimated jobs.

3,147,760 estimated jobs/129,250 respondents = 24 responses per respondent.

The DOL estimates the average disclosure to require 1.5 minutes. It takes approximately 20 minutes to complete the form, and 30 seconds per individual response to photocopy and distribute completed forms. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, making copies, and making the required disclosures. The DOL estimates a total annual burden of 77,550 hours.

129,250 respondents x 24 responses = 3,102,000 responses.

20 min. + (24 responses x 0.5 min) = 32 minutes total respondent time.

32 min./24 responses = 1.5 average time per response.

3,102,000 responses x 1.5 minutes = 77,550 hours.

Most respondents to this information collection are Farm Labor Contractors, and the DOL has used the median hourly earnings for Farm Labor Contractors during 2006 to estimate the costs associated with respondents' burden hours. See DOL, Bureau of Labor Statistics, *National Sector NAICS Industry-Specific Estimates*, <ftp://ftp.bls.gov/pub/special.requests/oes/oesm06in2.zip>.

77,550 annual burden hours x \$9.79 = \$759,214.50.

¹ The information listed in the *2002 Census of Agriculture* comes from U.S. Department of Agriculture, National Agricultural Statistics Service 2002 reports. Specifically, it appears at *Volume 1—Geographic Area Series Publications—All States by Table—Table 7, Hired Farm Labor—Workers and Payroll: 2002*. The total was arrived at by adding the total number of farms (nationwide), that reported employing five to nine workers (73,825 farms), with the number of farms that reported employing ten or more workers (55,431). The actual total is 129,256.

13. WHD enforcement experience indicates respondents make disclosures required under this information collection by providing a photocopy of a completed Form WH-516. Accordingly, the DOL estimates respondent operational and maintenance costs to be \$93,060.00.

3,102,000 copies x \$0.03 per copy = \$93,060.00 copying costs.

14. Federal costs for this information collection involve printing Form WH-56 and mailing it to respondents.

The DOL estimates it will print or reproduce approximately 129,250 Forms WH-516 per year, for a total cost of \$60,747.50.

Printing: 129,250 copies x \$0.03 per copy = \$3877.50.

Mailing: 129,250 copies x \$0.44 per copy (\$.41 postage + \$.03 envelope) = \$56,870.00.

Total Federal costs: \$3877.50 + \$56,870.00 = \$60,747.50.

15. This submission reflects an 8750 burden hours increase for respondents (from 68,800 hours to 77,550 hours), because of the increased estimated responses (from 1,594,800 responses to 3,102,000 responses). A change in the source for estimating the number of agricultural workers accounts for most of this difference.² The change in DOL methodology for calculating the burden hours, from total time per respondent to time per response, has had a neutral effect on the burden. The DOL has based previous estimates on the time needed for a single respondent to make all disclosures (32 minutes). The revised methodology of providing an average 1.5 minutes per individual response, is based on averaging the 20 minutes to complete the original form plus the 12 minutes to copy and distributed the forms (0.5 x an average of 24 workers = 12 min.) among the individual responses. This also equals 32 minutes for the total burden per typical respondent. The increase for estimated responses increases the total respondent operation and maintenance costs by \$50,060.00 (from \$43,060.00 to \$93,060.00). The supporting statement also estimates total Federal costs will increase by \$24,067.50 (from \$36,680.00 to \$60,747.50), due to an increase in the overall estimate for number of Forms WH-516 the WHD will mail and increased mailing costs.
16. The DOL does not publish this information collection.
17. This information collection request does not seek a waiver from the requirement to display the expiration date.
18. The DOL does not seek exception to the certification requirements.

² The 2004 Supporting Statement used a U.S. Department of Commerce, Bureau of Economic Analysis estimate from 2002 to estimate the number of agricultural workers, other than proprietors, at 886,000. The current Supporting Statement uses the 2002 Census of Agriculture estimate 2,248,402 agricultural workers. The DOL has used the Census of Agriculture to estimate the number of respondents in both supporting statements, and this change provides for a uniform basis in estimating the burden.