

**SUPPORTING STATEMENT  
FAIR LABOR STANDARDS ACT  
29 C.F.R. §§ 516.31, 530.101-.103, -.202  
APPLICATION TO EMPLOY HOMEWORKERS (Form WH-46); PIECE-RATE  
MEASUREMENTS; AND HOMEWORKER HANDBOOKS (WH-75)  
OMB Control No.: 1215-0013**

**A. Justification**

**1. Circumstances Necessitating Information Collection**

Fair Labor Standards Act (FLSA) section 11(d), 29 U.S.C § 211(d), authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary or appropriate to prevent the circumvention or evasion of the minimum wage requirements of the Act. The Department of Labor (DOL) restricts homework in seven industries (i.e., knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries) to those employers who obtain certificates. See 29 C.F.R. §§ 530.1-.2. The DOL may also issue individual certificates in any industry permitting industrial homework in certain hardship cases. See 29 C.F.R. §§ 530.3-.4. Under a certification program that took effect in January 1989, the DOL now allows employers to obtain general (employer) certificates to employ homeworkers in all restricted industries except women's apparel and hazardous jewelry manufacturing operations. See 29 C.F.R. § 530.101. Homework has always been permitted under the FLSA in all other industries, provided, the employer maintains Homeworker Handbooks (Form WH-75) for such employees' recording their hours of work and other required payroll information. See 29 C.F.R. § 516.31.

**A. Applications to Employ Homeworkers (Form WH-46)**

In order to be permitted to employ homeworkers in the restricted industries under the certification program, an employer must first apply to the Wage and Hour Division (WHD) of the DOL for a certificate. 29 C.F.R. § 530.101(c). The employer's application (i.e., Form WH-46) must contain the information required by Regulations 29 C.F.R. § 530.102—including the names, addresses, and languages (other than English) spoken by the homeworkers—and the written assurances set forth in Regulations 29 C.F.R. § 530.103. Upon approval of the application, the DOL issues a certificate authorizing employment of homeworkers in the restricted industry. Unless suspended or revoked, such certificates are valid for two-year periods. 29 C.F.R. § 530.101(b). A new application must be submitted for renewal. See *Id.*

B. Piece-rate Measurements

Regulations 29 C.F.R. § 530.202(a) requires that employers in the restricted industries under the certification program who pay workers based on piece-rates have documentation of the work measurements used to establish such piece-rates and the circumstances under which such measurements were conducted. The documentation must be retained for three years and be made available to the WHD on request. *Id.*

C. Homeworker Handbooks (Form WH-75)

Regulations 29 C.F.R. § 516.31(c) sets forth the requirement that employers obtain from the WHD a separate Homeworker Handbook for each homeworker employed. The employer must ensure that all handbooks contain the proper entries concerning hours of work. *Id.* This requirement applies to all employers of homeworkers subject to the FLSA. *Id.* Employers are required to retain the completed Handbooks for two years. *Id.*

2. Use

A. Applications to Employ Homeworkers (Form WH-46)

The application process provides the WHD with a means of identifying employers of homeworkers and individual homeworkers in the restricted industries who may not be identified otherwise. Further, the application process provides an early opportunity for the WHD to contact employers of homeworkers and assist them in complying with the homeworker requirements.

B. Piece-rate Measurements

The requirement that employers record and retain documentation of the method used to establish piece-rates is necessary so that the WHD can verify that rates were properly determined and resulted in wage payments to homeworkers at a rate at least equal to the FLSA minimum wage for all hours worked in the workweek.

29 C.F.R. § 530.202. Failure to require this documentation would impair the WHD's ability to assure FLSA compliance.

C. Homeworker Handbooks (Form WH-75)

To ensure that employers fulfill their obligation to obtain and record accurate hours worked information whenever they distribute homework to employees and collect it from them, homeworkers record the information as they perform the work. *See* 29 C.F.R. §§ 516.31(c), 530.103(d)-(e). Individual homeworkers

retain the Handbooks until completely filled in and then return them to the employer; however, they do provide the Handbooks to the employer for transcription at the end of each pay period. 29 C.F.R. § 516.31(c). The WHD examines this information when conducting homeworker investigations to determine FLSA compliance. *Id.* Failure to require an employer to collect and retain this information would make it extremely difficult to determine whether employers pay homeworkers in compliance with the FLSA.

### **3. Technology**

The DOL has posted Form WH-46 and instructions for completing it on the DOL Web site at: <http://www.dol.gov/esa/whd/forms/WH-46.pdf> and [http://www.dol.gov/esa/whd/forms/fts\\_homeworker.htm](http://www.dol.gov/esa/whd/forms/fts_homeworker.htm). This form is fillable, printable, and may be downloaded from the DOL Web site. Respondents may mail a completed application to the DOL upon printing.

In accordance with the Government Paperwork Elimination Act, the DOL has assessed the practicability of developing an “on-line” submission option for Form WH-46 and determined it is not practical to do so. Regulations 29 C.F.R. § 530.102 requires that the “initial request for certification or renewal application [Form WH-46] shall be signed by the employer...” In order to meet this regulatory requirement, the DOL would need to obtain a Public Key Infrastructure (PKI) certificate for each authorized employer. The WHD has been informed that each PKI certificate would cost the agency between \$25.00 and \$35.00, compared to mailing costs of 42 cents for each mailed in submission. The DOL would also need to develop the Web page for employers to submit the information. These development costs would easily exceed the total annual mailing cost of \$11.25 for all employers filing a paper Form WH-46 and would not be justified for an information collection that receives less than 100 annual responses.

The piece-rate measurement provisions impose a recordkeeping requirement. Likewise, Form WH-75 is a recordkeeping form that is fillable, printable, and posted for downloading from the Internet at: <http://www.dol.gov/esa/WHD/forms/WH75EN.pdf> (English) and <http://www.dol.gov/esa/WHD/forms/WH75SP.pdf> (Spanish). The WHD only reviews this information in connection with an investigation under the FLSA. An on-line submission option is not practicable for these recordkeeping requirements.

### **4. Duplication**

There is no duplication of existing information collections. No similar information is available from any other source.

### **5. Minimizing Small Entity Burden**

This information collection does not have a significant economic impact on a substantial number of small entities. The information required to be reported and collected is the minimum necessary to ensure FLSA compliance with respect to homework. The DOL provides the associated forms to employers free of charge. The mailing costs associated with Form WH-46 are negligible.

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

The DOL cannot verify compliance with the FLSA in homework employment with less frequent information collections. Form WH-46 need only be completed on a bi-annual basis. 29 C.F.R. § 530.101(b). The requirement to retain contemporaneous records provides the employer with the information needed to ensure FLSA compliance. 29 C.F.R § 516.31(c). As a matter of the statutory provisions, the FLSA generally uses the workweek as the basis for determining proper wage payment. See 29 U.S.C. § 207(a); 29 C.F.R. § 778.103-105.

## **7. Special Circumstances**

There are no special circumstances required by this information collection.

## **8. Public Comments**

On April 15, 2009 the DOL published a notice in the *Federal Register* inviting public comments about this information collection. 74 Fed. Reg. 17544. The agency received no comments in response to this notice. Regular contacts with the regulated community during investigations and outreach events have not resulted in the agency concluding the information collection is unduly burdensome.

## **9. Payment or Gifts to Respondents**

The DOL offers no payments or gifts to respondents.

## **10. Assurances of Confidentiality**

The DOL makes no assurances of confidentiality to respondents regarding these information collections. As a practical matter, the DOL would only disclose information submitted in connection with an approval request in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552; the Privacy Act, 5 U.S.C. § 552a; and related regulations, 29 C.F.R. Parts 70 and 71.

## **11. Sensitive Questions**

These applications or records contain no sensitive information.

## 12. Estimated Annual Respondent Burden Hours

### REPORTING REQUIREMENTS

#### Applications to Employ Homeworkers (Form WH-46)

The DOL estimates that each employer of homeworkers in the restricted industries will spend approximately one-half hour preparing an application to employ homeworkers. Currently, approximately 50 employers have applied and received certificates to employ homeworkers in the restricted industries for a two-year period, an average of 25 applications per year. This results in an annual burden of 13 hours, rounded.  $25 \text{ applications} \times 1/2 \text{ hour} = 12.5 \text{ hours}$ .

### RECORDKEEPING REQUIREMENTS

#### A. Piece-rate Measurements

The DOL estimates each employer in the restricted industries subject to the certification program will complete documentation on three piece-rate work measurements annually and that each such documentation will take approximately one hour. Total annual burden is 150 hours.  $50 \text{ employers} \times 3 \text{ measurements} \times 1 \text{ hour}$ . In addition, the filing of each piece-rate work measurement will take approximately 1/2 minute, for an additional annual burden of approximately 1.25 hours.  $150 \text{ piece-rate work measurements} \times 1/2 \text{ minute} = 1.25 \text{ hours}$ .

Total piece-rate measurement recordkeeping burden—151 hours, rounded.

#### B. Homeworker Handbooks (Form WH-75)

Based on a May 2004, Bureau of Labor Statistics Survey (<http://www.bls.gov/news.release/homey.toc.htm>), the DOL estimates there are 302,005 respondents to the Form WH-75 information collection. The survey indicated that 3349 out of 136,602 survey participants performed work at home for pay; however, most of these workers appear to be in occupations that are exempt from the FLSA, e.g., managers and professionals. See <http://www.bls.gov/news.release/homey.t03.htm>.

The number of survey participants performing homework for pay in occupations likely not to be exempt from the FLSA was 448 persons (0.3% of the survey population). This information collection only applies to persons who work at home and are subject to the FLSA wage provisions. A 2004 estimate suggests the FLSA applies to 100,668,482 employees.  $100,668,482 \times .003 = 302,005$ .

The DOL estimates an average burden of 30 minutes per Handbook, with each respondent maintaining four handbooks annually. This results in a total annual burden of 604,010 hours. 302,005 respondents x 4 handbooks = 1,208,020 responses. 1,208,020 responses x 1/2 hour = 604,010 hours. Moreover, the DOL estimates it takes an average of 1/2 minute to file each completed Homeworker Handbook for an additional annual burden of approximately 10,067 hours. 1,208,020 handbooks x 1/2 minute.

TOTAL ANNUAL REPORTING AND RECORDKEEPING BURDEN = 13 + 151 + 604,010 + 10,067 = 614,241 HOURS.

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have moved in or produced for such commerce by any person are covered by the FLSA. In addition, employees of firms that are not covered enterprises under FLSA may still be subject to FLSA if they individually engage in interstate commerce or in the production of goods for interstate commerce. Accordingly, the FLSA covers a wide range of different sizes and types of employers, ranging from a small individually owned retail store to a large manufacturing enterprise with plants in several states. Any one of these employers, except industries where use of homeworkers is banned, may employ homeworkers to produce goods. Without the availability of specific data on those employers who employ homeworkers, the DOL has utilized the October 2008, average hourly rate for production or nonsupervisory workers on nonfarm payrolls of \$18.23 to determine respondent costs (The Employment Situation: December 2008, DOL, Bureau of Labor Statistics [http://www.bls.gov/news.release/archives/empsit\\_01092009.pdf](http://www.bls.gov/news.release/archives/empsit_01092009.pdf) , Table B-3). Annual respondent costs for all the subject information collections are \$11,197,613.43. \$18.23 x 614,241 hours.

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

Annual mailing costs for the applications to employers of homeworkers are \$11.25. 25 applications x \$.42 postage + \$.03 per envelope.

### **14. Estimated Annual Federal Costs**

#### **A. Applications to Employ Homeworkers (Form WH-46)**

The processing of the application involves the services of a GS-13, Step 4 analyst at the WHD Chicago, Illinois District Office (\$46.33/hr) and requires an estimated average of thirty minutes to review the form for approval or denial. Currently, approximately 50 employers have applied and received certificates to employ homeworkers in the restricted industries for a two-year period, an average of 25 applications per year. Accordingly, the DOL estimates the annual Federal

cost for processing the applications to be \$579.13. 25 applications x 30 min. x \$46.33/hr.

**B. Piece-rate Measurements**

The DOL associates no Federal costs with these requirements.

**C. Homeworker Handbooks (Form WH-75)**

Based on certification data, there is an average of four homeworkers for each employer subject to this information collection. Taking into account the number of employers in the certification program (50) and the estimated number of employers currently requesting Handbooks in the unrestricted industries annually (1,100), the DOL estimates it will receive 4,600 requests for Homeworker Handbooks. 1,150 employers x 4. Previous experience indicates that annually each homeworkeer uses an average of four Handbooks. Accordingly, the DOL will annually print and mail an estimated 18,400 Handbooks. 4,600 homeworkers x 4 = 18,400. The DOL estimates annual Federal costs as follows:

Printing (18,400 Handbooks).....	\$1,656.00
<u>Postage (1,150 mailings @ \$3.26).....</u>	<u>\$3,749.00</u>
Total Federal Costs for Handbooks.....	\$5,405.00

TOTAL FEDERAL COSTS FOR APPLICATIONS & HANDBOOKS—\$5,984.13

**15. Reasons for Program Changes or Adjustments Affecting Public Burdens**

The DOL has no program changes or adjustments affecting public burdens to report.

**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 C.F.R. § 1320.9.

**B. Employing Statistical Methods**

Not applicable.