

SUPPORTING STATEMENT
APPLICATIONS TO EMPLOY SPECIAL INDUSTRIAL HOMEWORKERS AND
WORKERS WITH DISABILITIES
REGULATIONS 29 C.F.R. PART 525 AND 29 C.F.R. PART 530
FORMS WH-2, WH-226, AND WH-226A
OMB CONTROL NUMBER 1215-0005

1. Fair Labor Standards Act (FLSA) section 11(d) authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent circumvention or evasion of the minimum wage requirements of the Act. 29 U.S.C. § 211(d). 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 for an individual homemaker who is unable to leave home because of a disability or must remain at home to care for an invalid. *See* 29 C.F.R. §§ 530.3-.4. The DOL 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.

To prevent curtailment of employment opportunities for workers with disabilities, FLSA section 14(c) authorizes those employers who obtain a certificate from the DOL to pay special minimum wages (*i.e.*, wages less than the Federal minimum wage) to workers whose productivity is impaired by their disability. *See* 29 U.S.C. § 214(c). FLSA section 14(c)(1) limits the Secretary’s authority to grant this class of subminimum wage certificates to those “whose earning or productive capacity is impaired by age or physical or mental disability.” 29 U.S.C. § 214(c)(1).

Consistent with FLSA sections 11(d) and 14(c), the DOL, Wage and Hour Division (WHD) regulates the employment of industrial homeworkers and workers with disabilities covered by special certificates and governs the application and approval process for obtaining the certificates.

2. Forms WH-2, WH-226, and WH-226A allow employers to apply to the WHD for special certificates. The WHD reviews the submitted forms to determine whether to grant or deny homework and subminimum wage authorization.

A. Industrial Homemaker’s Certificate

Employers use Form WH-2 to obtain certificates to employ individual homeworkers in one of the restricted homework industries. Upon application by the homemaker and the employer, the DOL may issue a certificate to the employer authorizing employment of an individual homemaker; provided, (1) it is shown that the worker is unable to adjust to

factory work because of age or physical or mental disability or is unable to leave home because the worker's presence is required to care for an invalid in the home, and (2) the worker has been engaged in industrial homework in the particular industry prior to certain dates specified in the regulations (may be waived if causes unusual hardship) or is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency. See 29 C.F.R. §§ 530.3-.4.

B. Application and Supplemental Data Sheet for Authority to Employ Workers with Disabilities at Special Minimum Wages

Employers use Form WH-226 and the supplemental data form, Form WH-226A, when obtaining authorization to employ workers with disabilities in competitive employment in work centers, hospitals, or institutions at subminimum wages that are commensurate with those paid to workers with no disabilities. Commensurate wages are based on the prevailing wages paid to experienced workers without disabilities performing essentially the same type, quality, and quantity of work in the same locality where the employee(s) with a disability is/are employed. School officials also use this form to request authorization for groups of students with disabilities to participate in school work experience programs, and State vocational rehabilitation counselors and Department of Veterans Affairs' officials use it to grant or extend temporary authorization to employ on-the-job trainees with disabilities. 29 C.F.R. § 825.8. The regulatory requirements concerning the issuance of certificates to employ workers with disabilities under subminimum wages are contained in 29 C.F.R §§ 525.7-.9 and .12-.13. Most certificates are valid for two years.

3. The DOL makes Forms WH-2, WH-226, and WH-226A available in fillable Adobe PDF format for downloading, completing on-line, and printing from the agency Web site at the respective URL for each form (<http://www.dol.gov/esa/forms/whd/WH-2.pdf> , <http://www.dol.gov/esa/forms/whd/wh226.pdf> , and <http://www.dol.gov/esa/forms/whd/wh226A.pdf>).

Pursuant to the Government Paperwork Elimination Act, the DOL has explored an electronic submission option for these forms that will satisfy regulatory requirements for a signature. The DOL has concluded that costs to develop a Web-based option would not be warranted for these information collections, because form WH-2 has only 50 respondents and Forms WH-226 and WH-226A some 3000 respondents. In addition to costs to develop the Web site for submission, each Public Key Infrastructure (PKI) certificate would cost in excess of \$40.00—compared to mailing costs of \$0.44. Form WH-2 also presents a particular challenge for obtaining signatures, as the collection may require up to four signatures (*i.e.*, the applicant, a witness, the employer, and a physician) on each form. To lessen the burden for renewal subminimum wage certificate applicants, the DOL provides preprinted forms that contain information previously submitted by the applicants.

4. The subject programs are unique to the WHD, and no similar information is available from any other source.
5. These information collections do not have a significant economic impact on a substantial number of small entities.
6. Completion of these forms is required to obtain certificates to employ workers under the subject programs, and the DOL uses data collected from these forms to determine whether the terms and conditions necessary to issue certificates have been met. The WHD could not effectively monitor employment in the restricted homework industries or administer the subminimum wage program for workers with disabilities, were the agency to collect the information less frequently. Were the DOL not to offer the forms, employers would have no means for applying for authorization to employ individual homeworkers in the restricted industries or to pay workers with disabilities at subminimum wages. A failure to offer these certificates would significantly reduce job opportunities for such individuals, as the FLSA only permits such employment under certificates issued by the DOL.
7. Regulations 29 C.F.R. § 525.8 instructs State agency or Department of Veterans Affairs' officials administering vocational rehabilitation programs seeking authorization to employ on-the-job trainees with disabilities to forward signed application Forms WH-226 and WH-226A to the WHD within 10 days of signing and informs respondents that the signed application constitutes a temporary authority to employ workers with disabilities at subminimum wages for 90 days. *See* 29 C.F.R. § 525.8(b)-(c). There are no other special conditions associated with these information collections.
8. The DOL published a *Federal Register* Notice inviting public comments about these information collections. *See* 72 FR 39850, July 20, 2007. The agency has received no comments. In addition, regular agency contacts with respondents have not indicated these information collections impose any substantive problems or undue burdens.
9. The DOL makes no payments or gifts to respondents.
10. The DOL makes no assurances of confidentiality in association with these information collections. As a practical matter, the DOL would only disclose information obtained under them in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552, with its attendant regulations, 29 C.F.R. part 70, and the Privacy Act, 5 U.S.C. § 552a, with its attendant regulations, 29 C.F.R. part 71.

11. The questions concerning disability on Forms WH-2, WH-226, and WH-226A may be considered sensitive; however, this information is necessary to insure that the WHD only issues certificates for individuals who meet the provisions established by law. The Freedom of Information Act and Privacy Act, as previously stated, protect the information and regulate the circumstances under which the DOL may disclose information from these forms.
12. The DOL has used enforcement experience and the actual submission data in the agency information system as the basis for developing the following estimates.

A. Form WH-2

The DOL estimates annually 50 respondents complete Form WH-2, and that each respondent requires 30 minutes to complete the form.

50 forms x 30 minutes = 1500 minutes = 25 annual burden hours.

B. Forms WH-226 and 226A

The DOL estimates annually 3000 respondents complete Form WH-226, and an initial respondent requires 45 minutes to complete the form.

3000 forms x 45 minutes = 135,000 minutes = 2250 annual reporting burden hours.

The DOL estimates the 3000 Form WH-226 respondents will also complete 9000 copies of Form WH-226A, and each copy requires 45 minutes. Please note that respondents submit Form WH-226A concurrently with Form WH-226. The average Form WH-226 submission has three copies of Form WH-226A attached.

9000 forms x 45 minutes = 405,000 minutes = 6750 annual reporting burden hours.

C. Total Annual Burden Hour Costs

25 WH-2 hours + 2250 WH-226 hours + 6750 WH-226A hours = **9025 Burden Hours.**

The FLSA covers a wide range of different sizes and types of employers, from small individually owned retail stores to large manufacturing enterprises with plants in several states. Any one of these employers or a designated employee may complete the application forms described in this submission. Without the availability of specific data on those employers who complete these forms, the DOL has used the April 2007, average hourly rate for production or nonsupervisory workers on nonfarm payrolls (\$17.34) to estimate respondent costs. See *The Employment Situation, June 2007*, DOL, Bureau of Labor Statistics, (http://www.bls.gov/news.release/archives/empsit_07062007.pdf).

BURDEN HOUR COSTS: 9025 HOURS X \$17.34 = **\$156,493.50.**

13. Employers use their own existing records to collect the data necessary to complete the subject application forms. These information collections require no extraordinary systems or technologies; thus, employers' only operational costs are for mailing completed applications.

MAINTENANCE AND OPERATION COSTS: 3050 MAILINGS x \$0.44* = **\$1342.00.**

14. Annual Federal costs (\$13,687.83) involve the printing, mailing and processing of the forms. Processing the initial and renewal application forms and entering them into the Wage-Hour Certificate Processing System requires the services of a GS-5, Step-4 employee located in Chicago, Illinois (\$16.45/hr). The analysis and approval of the initial application for certification requires the services of both a GS-11, Step-4 employee in either Washington, DC (\$29.36) or Chicago (\$30.15).

<u>Form</u>	<u>Printing</u>	<u>Mailing</u>	<u>Processing</u>
<u>WH-2</u> 50 forms	\$1.50	\$22.00*	Analyzing and approving <i>initial applications</i> for certification by GS-11, Step-4 employee in Washington, DC. 10 min. x 25 forms x \$29.36/hr. = 122.43. Total processing cost = \$122.43.
<u>WH-226</u> 3000 forms	\$90.00	\$1320.00*	Processing of <i>initial applications</i> by GS-5, Step-4 employee from Chicago, Illinois. 7 min. x 200 forms x \$16.45/hr. = \$383.78. Analysis of <i>initial applications</i> by GS-11, Step-4 employee from Chicago 10 min. x 200 forms x \$30.15/hr = \$1004.90. Processing of <i>renewal applications</i> by GS-5, Step-4 employee from Chicago, Illinois. 4 min. x 2800 forms x \$16.45/hr. = \$3070.72 Total processing cost = \$4581.83

* Mailing costs: \$0.41 postage + \$0.03 per envelope = \$0.44 per mailing.

WH-226A

9000 forms	\$270.00	\$0.00**	Processing of <i>supplemental forms</i> by GS-5, Step-4 employee from Chicago, Illinois. 3 min. x 9000 forms x \$16.45/hr. = \$7402.50 Total processing cost = \$7402.50.
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Totals:

12,050 forms	\$361.50	\$1342.00	\$11,984.33
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ANNUAL FEDERAL COSTS: \$361.50 + \$1342.00 + \$11,984.33 = **\$13,687.83**

15. There has been an adjustment in the number of annual burden hours, which have decreased by 3375 hours, from 12,400 hours to 9025 hours, due to a decrease in the estimate of the overall number of respondents from 4550 to 3050 and the number of responses from 16,550 to 12,050.

Although postage rates have increased from \$0.39 to \$0.41, operation and maintenance costs decreased by -\$658.00, from \$2000 to \$1342.00, because of a change in the estimated responses.

16. The DOL does not publish this information.
17. The DOL will display the expiration date for these information collections.
18. The DOL does not seek an exception to the certification requirements.

** Mailed with Form WH-226; thus, there are no additional mailing costs for these forms.