

SUPPORTING STATEMENT
MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT
29 C.F.R. § 500.80
Forms WH-501 and WH-501S
Migrant and Seasonal Agricultural Worker Protection Act Wage Statement
OMB Control No.: 1215-0148

A. Justification

1. Circumstances Necessitating Information Collection

Migrant and Seasonal Agricultural Worker Protection Act (MSPA) sections 201(d) and 301(c)–29 U.S.C. §§ 1821(d), 1831(c)–and Regulations 29 C.F.R. § 500.80(a), require each farm labor contractor, agricultural employer and agricultural association that employs any migrant or seasonal worker (collectively respondents) to make, keep, and preserve records for three years for each such worker concerning the:

- (1) Basis on which wages are paid;
- (2) Number of piece work units earned, if paid on piece work basis;
- (3) Number of hours worked;
- (4) Total pay period earnings;
- (5) Specific sums withheld and the purpose of each sum withheld; and,
- (6) Net pay.

Respondents are also required to provide an itemized written statement of this information to each migrant and seasonal agricultural worker each pay period. 29 U.S.C. §§ 1821(d), 1831(c); 29 C.F.R. §§ 500.1(i)(3), -80(d). In addition, MSPA sections 201(e) and 301(d) require that each farm labor contractor provide copies of all the records noted above for the migrant or seasonal agricultural workers the contractor has furnished to other farm labor contractors, agricultural employers or agricultural associations who use the workers. Except for the worker, the recipient of such records is to retain them for a period of three years. *Id.*

Regulations 29 C.F.R. § 500.80(a) requires respondents to make and keep certain records, including each worker's Social Security Number. Further, the wage statement provided to each worker at the time of wage payment is to include, among other items, the worker's Social Security Number and employer's Tax Identification Number. 29 C.F.R. § 500.80(a), (d).

2. Use

Forms WH-501 (English version) and WH-501S (Spanish version), MSPA Wage Statement, are Department of Labor (DOL) created optional use forms that allow a farm labor contractor, agricultural employer, or agricultural association to satisfy the statutory

requirement to make, keep, preserve, and disclose certain payroll records and to provide a statement of earnings listing the method of payment of wages to migrant and seasonal agricultural workers and to the users of such workers. *See* 29 U.S.C. §§ 1821(g), 1831(f); 29 C.F.R. § 500.1(i)(3), -.80. While use of these forms is optional, the MSPA requires the disclosure and maintenance of the information. *See* 29 U.S.C. §§ 1821(d)-(e), (g); 1831(c)-(d), (f), 1851-1853; 29 C.F.R. § 500.80(c), (d), -.140. Failure to require employers to maintain such records would make determination of compliance by the DOL extremely difficult.

The DOL is modifying Forms WH-501 and WH-501S to state the obligation to respond more precisely and enhance the authority to conduct the information collection.

3. Technology

The MSPA requires employers to maintain information concerning wage payments to migrant and seasonal agricultural workers and to provide the records to third parties who use these workers. 29 U.S.C. §§ 1821(e), 1831(d); 29 C.F.R. § 500.80. There is no particular format employers must use to maintain and provide the information; therefore, use of photocopies, computer printouts or any other form of technology containing the required information satisfies the statutory and regulatory requirements. The DOL makes Forms WH-501 and WH-501S available for downloading and printing off the DOL Web site at http://www.dol.gov/esa/WHD/forms/Form_WH-501.pdf and http://www.dol.gov/esa/WHD/forms/Form_WH-501S.pdf. Because DOL's Wage and Hour Division (WHD) only reviews this information in connection with an investigation conducted under the MSPA, an electronic submission option is not practicable for this information collection.

4. Duplication

This information collection does not duplicate other requirements. While the MSPA and the Fair Labor Standards Act (FLSA), 29 U.S.C. § 211(c), require maintenance of similar information, employers may use one record—such as Optional Form WH-501 or WH-501S—to satisfy both the MSPA and FLSA requirements. Similarly, respondents may use records maintained for tax purposes, such as employee Social Security Numbers and the employer's Tax Identification Number to satisfy the requirements of this information collection. The IRS requires the employers to maintain these tax records on such forms as the Form W-2, which is cleared under OMB Control Number 1545-0008. DOL regulations restate such recordkeeping requirements to make clear the MSPA concurrently requires them as a statutory matter and to provide an easy reference for respondents. Information unique to the MSPA information collections concerning migrant and seasonal agricultural worker employment is not available from any other source.

5. Minimizing Small Entity Burden

While this information collection does not have a significant economic impact on a substantial number of small entities, it does involve small businesses engaged in agriculture. As stated above, use of Forms WH-501 and WH-501S is optional; however, the forms provide a convenient method for employers, including small businesses, to maintain and provide the information the MSPA requires.

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

The DOL has the statutory responsibility to enforce and administer the MSPA, including determining whether farm labor contractors, agricultural employers, and agricultural associations have provided statements of earnings to migrant and seasonal agricultural workers and maintained copies of such statements. *See* 29 U.S.C §§ 1821(d), 1831(c),1862; 29 C.F.R. § 500.80(b)-(d). Failure to require an employer to maintain such records on a pay period basis would make a determination of compliance extremely difficult.

7. Special Circumstances

There are no special circumstances involved in this information collection.

8. Public Comments

On February 10, 2009, the DOL published a notice in the Federal Register inviting public comments about this information collection. 74 Fed. Reg. 6660. In response, the Department received one comment from a person who voiced concerns about slave labor, low wages, strengthening American agriculture, and other related issues; however, the comment did not address the maintenance of certain payroll records or the requirement to provide migrant and seasonal agricultural workers and the users of such workers with a statement of earnings listing the method of payment of wages that is the subject of this information collection. Regular agency contacts with respondents of this information collection have not indicated any substantive problems or undue burdens.

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 a request for records found in MSPA investigation files, including copies or transcriptions of information provided under this information

collection, 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

As previously noted in Item 1, Regulations 29 C.F.R. § 500.80(a) and (d) require respondent employers to maintain each worker's Social Security Number and to provide a wage statement to each worker at the time of wage payment that includes the worker's Social Security Number and employer's Tax Identification Number. The wage statement, provides the migrant or seasonal agricultural worker with evidence of his or her employment so that, where necessary, the worker may avail him/herself of benefits such as disability, worker's compensation or unemployment payments. Due to the transient nature of agricultural employment, it is often difficult for workers to substantiate employment history. Requiring the inclusion of the Social Security Number on the wage statement allows the worker to verify its accuracy to ensure payments are being credited to the correct account. This information is used to ensure workers receive proper wage payments.

12. Estimated Annual Respondent Burden Hours

The DOL bases the following estimates on the number of registered Farm Labor Contractors, identified survey data, and enforcement experience.

The DOL estimates the approximately 21,225 Farm Labor Contractors (FLCs) registered with the DOL and 30,317 farms of 50 acres or more that employ seasonal agricultural workers subject to the MSPA respond to this information collection; thus, the DOL estimates total respondents to be 51,542. See 2002 U.S. Department of Agriculture (USDA), National Agricultural Statistics Service (NASS), Census of Agriculture, United States, Summary and State Data, Volume 1, Geographic Area Series, Part 51, Table 55, p. 72; http://www.agcensus.usda.gov/Publications/2002/Volume_1_Chapter_1_US_USVolume104.pdf. Farms smaller than fifty acres are likely exempt from having to comply with this information collection. 29 U.S.C. § 1803(a)(1), 29 C.F.R. § 500.30(b). See also, 29 U.S.C. § 213(a)(6); 29 C.F.R. §§ 780.300-.332.

The DOL estimates there are 1,010,000 hired farm workers. USDA, Economic Research Service, Profile of Hired Farmworkers, A 2008 Update, p. 2; <http://www.ers.usda.gov/Publications/ERR60/ERR60.pdf>. Approximately, 25 percent of these workers are employed by Farm Labor Contractors. See *Id.* In addition, the DOL estimates crop workers spend an average of 34 weeks annually performing seasonal agricultural work. See Findings from the National Agricultural Workers Survey (NAWS) 2001-2002, A Demographic and Employment Profile of United States Farm Workers, DOL, Office of the Assistant Secretary for Policy Office of Programmatic Policy, pp. 24-25.

1,010,000 employees x 34 weeks = 34,340,000 million responses to workers.

In addition, based on the approximate 25 percent of respondents that are FLCs, the DOL has correspondingly increased its estimate to account for wage statements provided to other users of migrant and seasonal agricultural workers for recordkeeping purposes, for a grand total of 42,925,000 responses. $34,340,000 \times 1.25 = 42,925,000$.

For purposes of the General Services Administration, Regulatory Information Service Center and the OMB, Office of Information and Regulatory Affairs Combined Information System (ROCIS), the DOL estimates an average of 832.81596 annual responses per respondent.

With the exception of disclosing pay information to migrant and seasonal agricultural workers and maintaining the worker's Social Security Number and the employer's Tax Identification Number, the burden required to comply with this information collection has been reviewed and approved by OMB under the basic FLSA recordkeeping requirements contained in Regulations 29 C.F.R. part 516, under OMB Approval No.1215-0017. In addition, information collections sponsored by the Internal Revenue Service (*e.g.*, 1545-0008 for Form W-2), require the maintenance of Social Security Numbers. Records maintained for FLSA and tax purposes can be used to satisfy the requirements of this information collection. The DOL claims burden for the concurrent MSPA and FLSA information collection requirements under this (1215-0148) Control Number, and estimates the third-party disclosure and recordkeeping burden for information required over and above the basic FLSA or tax recordkeeping requirements is an average of 1 minute per response. This produces an annual burden of 715,417 hours. $42,925,000$ annual responses x 1 minute = 715,417 hours.

The DOL has used the May 2006 national median wage rate for a farm labor contractor of \$11.32 per hour to estimate annual respondent costs of \$8,098,520 (rounded) for the value of their time. See DOL, Bureau of Labor Statistics, Occupational Employment Statistics, <http://www.bls.gov/oes/2006/may/oes451012.htm>. 715,417 annual burden hours x \$11.32.

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

Most respondents use a computerized facsimile of Form WH-501/WH-501S or a standard business payroll form that provides all the information by the statute and regulations. The DOL estimates respondent operational costs to be \$0.05 per response to cover these costs. $42,925,000$ annual responses x \$0.05 = \$2,146,250. The DOL associates no other costs with this information collection.

14. Estimated Annual Federal Costs

The DOL estimates the agency annually prints or duplicates approximately 35,000 copies of Forms WH-501 and WH-501S. Federal costs of printing these forms are approximately \$1750. $35,000 \times \$0.05 = \1750 .

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

Changes in the anticipated burdens for this information collection result from adjustments made in DOL estimates for this information collection. These estimate adjustments stem from a revised methodology that better accounts for third-party disclosures made for recordkeeping purposes and updated information that affects the estimated number of responses.

Specifically, the DOL now estimates the number of respondents based on adding the number of FLCs and the number of farms of fifty or more acres that employ migrant agricultural workers. Prior estimates were based purely on the number of farms with fifty or more acres. These changes account for a reduction of 1,334,322 respondents, from 1,385,864 to 51,542.

A second reason for the revised estimates is that updated USDA data have resulted in the DOL revising the number of workers who receive MSPA statements. In addition, prior efforts to quantify the burden did not separately state the disclosures FLCs make to other users of migrant and seasonal agricultural workers. These two reasons result in an increase in the number of 1,581,000 responses, up from 41,344,000 to 42,925,000 responses. They also account for the 26,350 burden hour increase, up from 689,067 to 715,417 hours.

Finally, prior efforts to quantify respondent burden did not separately account for paper costs needs for making required disclosures. These costs are estimated to be \$2,146,250.

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 exemption 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 CFR 1320.9.

B. Employing Statistical Methods

Not applicable.