

**SUPPORTING STATEMENT
WAIVER OF CHILD LABOR PROVISIONS FOR AGRICULTURAL
EMPLOYMENT OF 10 AND 11 YEAR OLD MINORS IN HAND
HARVESTING OF SHORT SEASON CROPS
REGULATIONS 29 C.F.R. PART 575
OMB CONTROL No. 1215-0120**

1. Fair Labor Standards Act (FLSA) section 13(c)(4), 29 U.S.C. § 213(c)(4), provides that an employer or group of employers may apply to the Secretary for a waiver from the FLSA youth employment provisions to the employment for not more than eight weeks in any calendar year of 10 and 11 year olds as hand harvest laborers, provided the work meets certain criteria established by the FLSA. FLSA section 11(c) requires all employers covered by the FLSA make, keep and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. § 211(c). A FLSA covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*

Regulations 29 C.F.R. Part 575, in relevant part, sets forth the describes the information an employer or group of employers must submit when applying for a waiver of the youth employment provisions under FLSA section 13(c)(4). *See* 29 C.F.R. §§ 575.3-5. Regulations 29 C.F.R. § 575.8 specifies certain records employers must maintain.

The U.S. Department of Labor (DOL) has promulgated Regulations 29 C.F.R. Part 516 to establish the basic recordkeeping requirements that the agency separately clears under OMB Control No. 1215-0017. However, in addition to those basic recordkeeping requirements, employers granted waivers under FLSA section 13(c)(4) must (1) obtain and keep on file a record of a signed statement of the parent or person standing in the place of the parent for each 10 and 11 year old minor employed consenting to the employment of such minor under the waiver (*See* 29 C.F.R. § 575.8(a)); (2) maintain and preserve a record of the name and address of the school in which the minor employed under the waiver is enrolled (*See* 29 C.F.R. §575.8(i)); and (3) to post a copy of the waiver at the job site during the period of the waiver (*See* 29 C.F.R. §575.8(h)).

Although FLSA section 13(c)(4) allows the Secretary of Labor to consider granting waivers requests that would permit local minors 10 and 11 years of age to be employed outside of school hours in the hand harvesting of crops under certain conditions, the DOL has been enjoined from issuing such waivers. (*See National Ass'n of Farmworkers Organizations v. Marshall*, 628 F.2d 604 [D.C. Cir. 1980]). The agency has issued no waivers under these provisions for over 20 years.” Notwithstanding the injunction, the DOL must maintain this information collection and the underlying regulations because of the statutory provisions contained in FLSA § 13(c)(4).

2. The application for a waiver and required supporting data are used by DOL to determine whether the statutory requirements and conditions for granting an exemption, which

would then permit the applicants to employ 10 and 11 year olds to hand harvest short season crops, have been met. The records required to be maintained by employers who have been granted waivers are used by DOL to determine whether the employer has complied with the terms and conditions of the waiver. Without the application for waiver and supporting data, DOL would not have the statutory authority to grant a waiver and failure to require employer maintenance of these records would make it extremely difficult for DOL to determine employer compliance with the waiver.

3. As provided in 29 C.F.R. § 575.3, there is no particular order or form of waiver application prescribed by statute or the regulations for this information collection. The preservation of records in such forms as microfilm or automated word or data processing is acceptable provided the information is maintained and adequate facilities are available to DOL for inspection, copying, and transcription of the records. In addition, photocopies of records are acceptable under the regulations, as well as electronic submissions. Since these recordkeeping requirements may be kept in any form, the Government Paperwork Elimination Act (GPEA) requirements are met.
4. There is no duplicative effort to obtain the information required in the application. As previously noted in item #1 above, most of the records required to be maintained by employers granted a waiver are a restatement of recordkeeping requirements set forth in Regulations, 29 C.F.R. Part 516, Records to be Kept by Employers. Employers granted waivers are subject to the FLSA as they are engaged in "agriculture" as defined in section 3(f) of the FLSA. Moreover, the information requested on the application for waiver is not available from any other source. Therefore, the records required to be maintained are original employer records and are not available from any other source.
5. This information collection does not have a significant economic impact on a substantial number of small entities. The information required on an application for waiver is the minimum necessary to determine whether the statutory tests for the granting of the waiver have been met. The records required to be kept are, to a large extent, maintained by employers because of requirements of other agencies such as the Internal Revenue Service, Social Security Administration and various state agencies. No particular order or form of records is required by the regulations.
6. Regulations 29 C.F.R. Part 575 set forth the procedures to be followed, describe the information required, and define the supporting data which must be submitted by an employer or group of employers when applying for a waiver of the child labor provisions of the Act under section 13(c)(4) of the FLSA. Because the WHD has a statutory obligation to determine and ensure that covered employers comply with the FLSA, the recordkeeping requirements are an essential tool in determining compliance and failure to require the maintenance of these records of employment would make a determination of compliance with the terms and conditions of the waiver extremely difficult. The information required to be supplied by an employer applying for a waiver is only required at the time of application. Less frequent collection is not feasible.

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 at 72 FR 13531 on March 22, 2007. While the agency has received no comments related to this information collection, one person did submit a comment directed to the underlying provision allowing for issuing any waivers. As explained in Item 1 of this supporting statement, the waiver provision is statutory. With respect to the concern about the underlying statutory provision, as explained in Item 1 of this supporting statement, the DOL has been enjoined from issuing these waivers.
9. The DOL makes no payments or gifts to respondents.
10. The DOL makes no assurances of confidentiality to respondents. Information submitted in connection with a request for waiver and records of employment required to be maintained by an employer granted a waiver would only be disclosed by DOL in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the 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 DOL asks no sensitive questions in this information collection.
12. It is estimated that an employer or group of employers applying for a waiver would spend an estimated 3 hours assembling information and preparing each application for waiver, for an annual burden of 3 hours. Although no applications for waiver have been received since 1990, one waiver application is estimated annually because of the existing statutory right of an employer to request such a waiver. Moreover, the additional recordkeeping and posting requirements for employers granted waivers which are over and above those required under Regulations, 29 C.F.R. Part 516 (See 1. above.) are estimated to create an additional annual recordkeeping burden of one hour per application per year, bringing the total annual recordkeeping burden to 4 hours.

To estimate annual respondent costs, the average annual hourly wage rate for hired supervisory farm workers of \$24.03 (National Compensation Survey Estimate for Supervisors, Related Agricultural Occupations, Bureau of Labor Statistics [http://data.bls.gov/PDQ/servlet/NCSOutputServlet;jsessionid=f0304bec91ec\\$3F\\$3F\\$3](http://data.bls.gov/PDQ/servlet/NCSOutputServlet;jsessionid=f0304bec91ec$3F$3F$3)) was used for an annual cost burden of \$96.12 (\$24.03 x 4 hours).

13. Operation and maintenance costs consist of mailing costs. The cost for one application is \$.44 (\$.41 postage + \$.03 for envelope).
14. An average of one waiver application is received annually and it is estimated that approximately 3 hours are expended in processing an application, which includes analysis of the submission, preparation of a letter granting or denying the waiver, and

preparation of a *Federal Register* notice informing the public when a waiver is granted.
Annual Federal costs are estimated as follows:

Analyzing-Processing: \$41.85/hr (GS 13, Step 4) x 2 hours = \$83.70

Clerical: \$16.02/hr (GS 5, Step 4) x 1 hour = \$16.02

TOTAL ANNUAL FEDERAL COST.....\$99.72

15. There is no change in burden from the previous submission.
16. The DOL does not publish this information.
17. Because there are no forms associated with this information collection, expiration dates are not applicable.
18. The DOL does not seek exception to the certification requirements.