

SUPPORTING STATEMENT
FAIR LABOR STANDARDS ACT RECORDKEEPING REQUIREMENTS
REGULATIONS 29 C.F.R. PARTS 505, 516, 519, 520, 525, 530, 548, 551, 552, 553, and 570
OMB CONTROL NO. 1215-0017

1. The Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.*, sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. §§ 206; 207; 211; 212. FLSA requirements apply to employers of employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; however, the FLSA contains exemptions that apply to employees in certain types of employment. *See*, 29 U.S.C. § 213, *et al.*

FLSA section 11(c) requires all employers covered by the FLSA to 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.*

The U.S. Department of Labor (DOL) has promulgated Regulations 29 C.F.R. Part 516 to establish the basic FLSA recordkeeping requirements. The DOL has also issued specific sections of Regulations 29 C.F.R. Parts 505, 519, 520, 525, 530, 548, 551, 552, 553, and 570 to supplement the Part 516 requirements and to provide for the maintenance of records relating to various FLSA exemptions and special provisions. The following is a listing of the specific regulatory provisions establishing FLSA recordkeeping requirements.

- A. Regulations 29 C.F.R. § 505.5 identifies the records that National Endowments for the Arts and Humanities grant recipients must keep. Generally, section 505.5(b) creates no unique burden, since 29 C.F.R. Part 516 and, to the extent there is concurrent jurisdiction, Part 1904 subsume the requirements of this section. *See* B, below, and 29 C.F.R. § 1904.4. The DOL clears the recordkeeping requirements of § 1904.4 under OMB Control No. 1218-0176; consequently, those provisions are not part of this package.
- B. Various sections of Regulations 29 C.F.R. Part 516, Records to Be Kept by Employers, list the records employers must create and maintain for various types of employees:
 - i. Section 516.2 – records on employees subject to 29 U.S.C. § 206; 207(a), respectively establishing Federal minimum wage and overtime requirements. The regulation requires employers to keep each employee’s full name as used for Social Security purposes (and symbol used, if the name is not used elsewhere in the record), home address, sex and occupation, date of birth if under 19 years of age, identified workweek, regular rate of pay, hours worked each day and total for the week, total weekly straight time earnings, total weekly overtime premium pay,

additions and subtractions from pay, total earnings, date of payment, and any back wage payments. Employers may use schedules for employees working fixed times and record only any variations from the schedule. Most other Part 516 requirements provide for employers to maintain a portion of the data required under § 516.2.

- ii. Section 516.3 – records when claiming the 29 U.S.C. § 213(a)(1) minimum wage and overtime pay exemption applicable to executive, administrative, professional, and outside sales personnel. To the § 516.2 provisions, employers add the basis for pay and total pay for the pay period and may omit the regular rate of pay, hours worked, and the additions and subtractions from pay.
- iii. Section 516.5 – records employers must preserve for a period of three years: payroll records; certain collective bargaining agreements, plans, trusts, employment contracts, memoranda, written agreements, sub-minimum wage certificates, notices used to determine an employee’s pay rate, and certain sales and purchase records.
- iv. Section 516.6 – records employers must preserve for a period of two years: time and earnings records; wage rate tables; and order, shipping, and billing records.
- v. Section 516.9 – petitions for relief, when seeking authority to maintain alternative records, stating the reason(s) for the request.
- vi. Section 516.11 – records when claiming the 29 U.S.C. §§ 213(a)(3); 213(a)(5), 213(a)(8); 213(a)(10); 213(a)(12); 213(d) minimum wage and overtime exemptions. FLSA sections 13(a)(2) and 13(a)(4), 29 U.S.C. §§ 213(a)(2) and 213(a)(4), have been repealed since the DOL promulgated this regulation. Employers need not maintain when the workweek starts, regular rate of pay, hours worked each day and total for week, total straight time earnings, total overtime premium pay, additions and subtractions from pay, total earnings, and date of payment.
- vii. Section 516.12 – records when claiming the 29 U.S.C. §§ 213(b)(1)-(3); 213(b)(5); 213(b)(9)-(10); 213(b)(15)-(17); 213(b)(20)-(21); 213(b)(24); 213(b)(27)-(28) overtime pay exemptions that apply to various types of work. Employers need not maintain certain records related to the regular rate of pay and total overtime premium pay.
- viii. Section 516.13 – records when claiming the 29 U.S.C. § 213(b)(13) overtime pay exemption applicable to livestock auction employees. Employers need not maintain records related to the regular rate of pay and total overtime premium pay but add the hours worked in agriculture and in connection with livestock operations.

- ix. Section 516.14 – records when claiming the 29 U.S.C. § 213(b)(4) overtime pay exemption applicable to country elevator employees. Employers need not maintain records related to the regular rate of pay and total overtime premium pay but add names of employees not covered by the FLSA and information that supports the elevator meets the “area of production” requirements of 29 C.F.R. Part 536.
- x. Section 516.15 – records when claiming the 29 U.S.C. § 213(b)(11) overtime pay exemption applicable to local delivery employees. Employers need not maintain records related to the regular rate of pay and total overtime premium pay but add the basis for determining wages, a copy of the Wage and Hour Division (WHD) Administrator’s findings on the plan, plan changes, list of persons employed pursuant to the plan, and quarterly computations of each employee’s average weekly hours worked.
- xi. Section 516.16 – records when claiming the 29 U.S.C. § 207(i) overtime pay exemption applicable to commission employees of a retail or service establishment. Employers need not maintain records related to the regular rate of pay and total straight/overtime time earnings but add a notation on the employee’s records indicating the pay basis and keep a copy of the agreement or understanding and the records separately showing commission and non-commission straight time earnings.
- xii. Section 516.17 – records when claiming the 29 U.S.C. § 213(b) overtime pay exemption applicable to seamen. Employers need not maintain records of when the workweek starts, regular rate of pay, total hours worked for the week, total weekly straight time earnings, and total weekly overtime premium pay but add the basis for the wages, total hours worked during the pay period, total wages for the pay period, and information identifying the vessel on which employed.
- xiii. Section 516.18 – records when claiming the 29 U.S.C. §§ 207(m); 213(h)-(j) partial overtime pay exemptions that respectively apply to employees employed in certain tobacco, cotton, sugar cane, and sugar beet services. The employer notes the weeks during which it claims the applicable exemption.
- xiv. Section 516.20 – records when claiming the 29 U.S.C. § 207(b)(1)-(2) partial overtime pay exemptions applicable to employees covered by certain collective bargaining agreements. The employer adds records to show wage calculations made under the exemption.
- xv. Section 516.21 – records when claiming the 29 U.S.C. § 207(b)(3) partial overtime pay exemptions applicable to employees of bulk petroleum dealers. The employer adds records to show wage calculations made under the exemption.

- xvi. Section 516.22 – records when using 29 U.S.C. § 207(n) to exclude certain hours worked from overtime calculations for employees engaged in charter activities of carriers. The employer records hours worked in charter activities and keeps a copy of the employment agreement used to claim the exemption, including the date of the agreement.
- xvii. Section 516.23 – records when using 29 U.S.C. § 207(j) to pay overtime to hospital and residential care employees on the basis of the employee working more than eight hours in a day and 80 hours in a 14-day work period. Employers substitute the work period for the workweek to document FLSA compliance, show any daily overtime calculations, and maintain a copy of the employment agreement/understanding used to claim the exemption, as well as the date of the agreement.
- xviii. Section 516.24 – records when using 29 U.S.C. § 207(f) to provide a weekly guarantee of pay of not more than 60 hours to employees whose duties necessitate irregular hours of work that otherwise would cause an employee’s wages to vary widely from week to week. The employer need not maintain records of daily/weekly straight time and weekly overtime earnings but would record the amount of the weekly guarantee and total weekly pay in excess of the guarantee, and keep a copy of the agreement of memorandum documenting the agreement to pay on this basis.
- xix. Section 516.25 – records when using 29 U.S.C. § 207(g)(1)-(2) to pay an “applicable rate” for overtime work. Employers substitute recording the basis and amount of the rate, number of overtime hours worked at the applicable rate, date of the agreement or understanding to use the “applicable rate” method during overtime hours, and any periods covered by the agreement or understanding for the regular rate of pay as normally computed or overtime premium pay normally required by § 516.2.
- xx. Section 516.26 – records when using 29 U.S.C. § 207(g)(3) to pay employees for overtime work at premium rates based on a “basic rate” equivalent to each employee’s average-hourly earnings. Employers must maintain the basis and amount of each rate, the computation establishing the rate, the nature and amount of any payment not included per 29 U.S.C. § 207(g)(3), the representative period used to calculate the amount, and the agreement or understanding authorizing the pay method.
- xxi. Section 516.27 – records when using 29 U.S.C. § 203(m) to make deductions from wages for board, lodging, or other facilities. When an employer wishes to make these types of deductions that will result in the employee receiving cash wages of less than the minimum wage and/or the employee is eligible for overtime pay, the employer must maintain itemized records showing the nature and amount of the expenditures entering into the computation of reasonable cost for the deductions.

- xxii. Section 516.28 – records on tipped employees, as defined in 29 U.S.C. § 203(t). The employer must note that the employee’s wages are in part determined by tips, the amount of tips reported to the employer (may consist of IRS Form 4070), how much of an hourly tip credit, if any, the employer claims against the minimum wage, and daily hours worked broken out by tipped and non-tipped occupations.
 - xxiii. Section 516.29 – records when claiming the 29 U.S.C. § 213(b)(29) partial overtime pay exemption applicable to employees of a private entity operating an amusement or recreational establishment located in a National Park or National Forest or on land in the National Wildlife Refuge System. The employer need only record the regular rate of pay during overtime workweeks when the exemption does not apply.
 - xxiv. Section 516.30 – records when using 29 U.S.C. § 214 authorized certificates to pay sub-minimum wages to certain employees (*i.e.*, learners, apprentices, messengers, students, or handicapped workers). The employer must maintain a record of employees paid under these certificates.
 - xxv. Section 516.31 – records when employing industrial homeworkers. The DOL clears this recordkeeping requirement under OMB Control No. 1215-0013. The requirement is not part of this package.
 - xxvi. Section 516.33 – records when claiming the 29 U.S.C. §§ 213(a)(6); 213(b)(12) minimum wage and/or overtime pay exemptions applicable to agricultural employees. An employer claiming the section 213(a)(6)(A) exemption need not record birth dates of persons who are at least 19-years old (a further recordkeeping exemption exists for parents and guardians), and straight time earnings; however, the employer must annotate the names of persons for whom it claims the exemptions, as well as keep employee statements indicating the number of weeks they were employed and date of birth for any employee under age 18-years and employed on a school day and/or in a hazardous occupation.
 - xxvii. Section 516.34 – records when using 29 U.S.C. § 207(q) to exclude employer required remedial education or training in other basic skills as hours worked. The DOL clears this recordkeeping requirement under OMB Control No. 1215-0175. The requirement is not part of this package.
- C. In 29 C.F.R. Part 519, Employment of Full-Time Students at Sub-minimum Wages, regulations 29 C.F.R. §§ 519.7; 519.17 by reference incorporate Part 516 into their requirements, and they provide for the additional records retail or service establishments and agricultural employers must keep when paying sub-minimum wages to full-time students employed under certificates issued pursuant to section 214. Section 519.7(b)(3) requires retail and service establishments and agricultural employers to keep a record of the monthly hours of employment of full-time students at sub-minimum wages along with the total hours of employment during the month of all employees in the establishment. Section 519.17(a)(3) requires institutions of

higher education to keep records of the total number of all full-time students employed at the campus of the institution at sub-minimum wages and the total number of all employees at the campus to whom the FLSA minimum wage provisions apply.

Regulations 29 C.F.R. §§ 519.9; 519.19 provide for filing written requests for reconsidering decisions made about these sub-minimum wage certificates. The DOL clears the applications, Forms WH-200 and WH-202, used to apply for these sub-minimum wage certificates under OMB Control No. 1215-0032, and they are not part of this current submission.

- D. In 29 C.F.R. Part 520, Employment under Special Certificate of Messengers, Learners (Including Student Learners), and Apprentices, § 520.203 by reference incorporates Part 516 into Part 520.

Section 520.204 provides for filing reconsideration requests on actions the WHD takes with regard to these sub-minimum wage certificate applications. The DOL clears the applications, including Forms WH-205 and WH-209, under OMB Control No. 1215-0192; consequently, they are not part of this package.

Section 520.412 lists additional records employers must keep using section 214 certificates to pay sub-minimum wages to pay messengers, learners, and apprentices. Specifically, the regulation imposes unique requirements in relation to learners and apprentices. Employers using learner sub-minimum wage certificates must maintain (1) a statement from each learner of the cumulative amount of applicable work experience during the previous three years and (2) records relating to the filing or canceling of any work orders with the public employment service that pertain to the occupations performed by the learners. Employers hiring apprentices under sub-minimum wage certificates must keep copies of the apprenticeship program. Apprenticeship committees using sub-minimum wage certificates must also maintain (1) a list of employers to whom each apprentice was assigned and the period of time so assigned and (2) the cumulative amount of work experience gained in order to establish the proper wage rate at the time of each assignment.

Section 520.508 lists records that employers must keep when using section 214 certificates to pay sub-minimum wages to student learners. The regulation imposes a unique recordkeeping requirement to note the extra hours worked by a student learner because school is not in session.

- E. In 29 C.F.R. Part 525, Employment of Workers with Disabilities under Special Certificates, § 525.12 specifies the terms and conditions of special minimum wage certificates granted to employers of disabled workers, and § 525.16 lists the records that a community rehabilitation program (CRP) must maintain when using section 214 certificates to sub-minimum wages to pay clients with disabilities. In addition to the requirements of 29 C.F.R. Part 516, § 525.16 requires a CRP to maintain records (1) verifying the workers' disabilities and individual productivity, and (2)

documenting prevailing wages paid to non-disabled workers performing similar work in the vicinity as well as their production standards and supporting documentation. Sections 525.18 and 525.22 provide a process by which (1) any party aggrieved by actions taken by the DOL under the regulation or (2) any employee employed pursuant to one or more of these sub-minimum wage certificates or the parent or guardian of such an employee may file a petition for review with the WHD or DOL, respectively. The DOL clears the application (Form WH-226) for these sub-minimum wage certificates under OMB Control No. 1215-0005, and it is not part of this package.

- F. In 29 C.F.R. Part 530, Employment of Homeworkers in Certain Industries, § 530.9 incorporates the § 516.31 requirements by reference. Section 530.8 reiterates the § 516.5(a)(6) requirement that employers retain homeworke certificates for three years. Section 530.11 allows parties aggrieved by WHD action on a certificate to petition for review and relief. As previously noted, the DOL clears the additional recordkeeping requirements for a homework handbook under OMB No. 1215-0013. See Item 1 B xxv of this supporting statement.
- G. In Regulations 29 C.F.R. Part 548, Authorization of Established Basic Rates for Computing Overtime Pay, § 548.306 discusses the average earnings for the year or quarter year preceding the current quarter when employers pay employees overtime work based on a basic rate equivalent to an employee's average hourly earnings in accordance with 29 U.S.C. § 7(g)(3). Section 548.306(f) by reference incorporates the Part 516 requirements.
- H. In 29 C.F.R. Part 551, Local Delivery Drivers and Helpers, § 551.9 incorporates the § 516.15 requirements as the records employers must keep when claiming the 29 U.S.C. § 13(b)(11) overtime pay exemption applicable to local delivery drivers and helpers. See Item 1 B x of this supporting statement.
- I. In 29 C.F.R. Part 552, Application of the FLSA to Domestic Service, § 552.110 lists the records employers must keep when claiming either the 29 U.S.C. § 213(a)(15) minimum wage and overtime exemptions for persons employed as domestics on a casual basis or the § 213(b)(21) overtime pay exemption for domestic employees who reside on the premises. Section 552.110 incorporates the Part 516 requirements by reference and provides that an employer maintain a copy of an agreement reached with any domestic employee living on the premises that excludes certain amounts of time of complete freedom from any duties (*e.g.*, sleeping and eating time) from hours worked, in lieu of maintaining an actual record of hours worked by the domestic, and provides a complete exception to maintaining any records on persons employed as domestics on a casual basis.
- J. In 29 C.F.R. Part 553, Application of the FLSA to State and Local Government Agencies, § 553.50 contains the records State and local governments must keep when using 29 U.S.C. § 207(o) to provide compensatory time and time-off in lieu of a cash overtime payment. Section 553.50 incorporates the § 516.2 provisions by reference,

and employers maintain the number of compensatory time hours earned and used each pay period, any cash payments for earned compensatory time, and the agreement or understanding (or a record of its existence) upon which the employer claims the exemption. Section 553.51 contains the records public agencies must maintain when claiming the 29 U.S.C. § 207(k) partial overtime exemption applicable to law enforcement and fire fighting employees. Section 553.51 incorporates the § 553.50 requirements by reference, where they apply, and requires the employer to identify the 7 to 28 day long work periods used to claim the exemption.

- K. In 29 C.F.R. Part 570, Child Labor Regulations, Orders, and Statements of Interpretation, § 570.50(c) contains a unique requirement that both the school and the employer of a student-learners in certain cooperative vocational training programs that involve hazardous occupations keep on file copies of a written agreement needed to claim a regulatory exception to the general prohibition on minors performing hazardous work. The school coordinator or principal and the employer of the student learner must sign the agreement, and it must provide that (1) the hazardous work shall be incidental to the training, (2) the work shall be intermittent and for short periods of time under the direction of a qualified and experienced person, (3) safety instructions shall be given by the school and correlated by the employer, and (4) a schedule or organized and progressive work shall be prepared. Section 570.72 identifies the records employers must keep when claiming a regulatory exemption to the general prohibition on minors under age 16 performing hazardous agricultural occupations. The exemption applies to such minors when enrolled in certain training programs in the same way § 570.50(c) applies in non-agricultural occupations. The DOL clears § 570.6 requirements relating to age certificates under OMB Control No. 1215-0083; consequently, they are not part of the current submission.
2. The WHD uses this information to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document FLSA compliance, including showing qualification for various FLSA exemptions.
 3. Consistent with Government Paperwork Elimination Act (GPEA) requirements, the WHD has considered electronic filing options for those regulations providing for filing petitions to appeal various regulations mentioned in this information collection and has not found it practical to create an on-line system. The agency receives no such petitions and the cost of developing and maintaining an on-line system clearly would exceed its value. The agency would accept appeals filed by fax, provided they contain all required information. With respect to the recordkeeping aspect of this collection, § 516.1 makes clear that the regulations prescribe no particular order or form of records and employers may preserve records in such forms as microfilm or automated word or data processing memory is acceptable, provided the adequate facilities are available for inspection and transcription of the records.
 4. This information collection duplicates no WHD requirements, except as explained in Item 1 of this supporting statement. Typically, any repeated requirements help employers to understand the requirements because each regulation states all of its requirements

together and this reduces the need for respondents to crosscheck multiple regulations. Compliance with one regulation automatically satisfies the other regulation containing the identical requirement and there is no duplicate burden. The Internal Revenue Service (IRS) also requires certain similar information (*e.g.*, employee names and addresses). The DOL regulations make clear the information employers must (1) maintain to demonstrate compliance with applicable labor standards and (2) provide to WHD representatives during a compliance action. There is no duplicate burden, however, since compliance with any similar IRS requirement also satisfies the DOL requirements.

5. Although this information collection does involve small businesses, including small State and Local government agencies, this information collection does not have a significant economic impact on a substantial number of those small entities. The DOL, nevertheless, minimizes respondent burden by requiring no order or specific form of records in responding to this information collection. Moreover, employers would normally maintain the records identified in this information collection under usual or customary business practices.
6. The WHD has a statutory obligation to determine and ensure that covered employers employees comply with FLSA requirements. The recordkeeping requirements are an essential tool in determining such compliance. As the FLSA generally applies its provisions on a workweek basis, less frequent collection of information would prevent the WHD from monitoring compliance with the provisions of the Act. The DOL regulations provide exceptions where the workweek does not apply. The DOL must retain these information collections, even those with no current respondents (*e.g.* certain sub-minimum wage programs), because the FLSA provides various exemptions for employers who must have a means to apply for the exemption.
7. Except for the requirement to maintain most records on a weekly (workweek) basis to ensure compliance with the monetary provisions of FLSA, 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 72 FR 4536, January 31, 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 completing these recordkeeping requirements.
10. The DOL makes no assurances of confidentiality to respondents. As a practical matter, the DOL would only disclose information under these requests 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. The following table enumerates regulatory sections with an associated recordkeeping burden and distributes the DOL estimates of the total number of employers, employees, and burden hours to each particular recordkeeping section. For a detailed discussion of each recordkeeping section, regardless of whether or not a burden exists, see the response to Item 1. The DOL has used data provided by the Bureau of Labor Statistics, WHD Certificate Processing System, WHD enforcement data, WHD enforcement staff experience, and Department of Agriculture, National Agriculture Statistics Service to develop the following burden estimates.

<u>29 C.F.R §</u>	<u>Respondents</u>	<u>Reponses</u>	<u>Burden Hours</u>
505.5 ¹	0	0	0
516.2 ²	852,359	20,456,616	681,887
516.3 ³	0	0	0
516.5 & 516.6 ⁴	0	0	0
516.9 ⁵	1	1	1
516.11; 516.12; 516.13; 516.14 ⁶	0	0	0
516.15 ⁷	60	4080	68
516.16; 516.17; 516.18; 516.20; 516.21; 516.22;			

¹ This regulation generally unique burden, as §§ 516.2 and, to the extent there is concurrent jurisdiction, 1904.4 subsume the § 505.5 requirements. The WHD has had no activity under § 505.

² The FLSA covers approximately 132 million employees working for 8.3 million employers in the private sector. See *2005 Quarterly Census of Employment and Wages*, DOL, Bureau of Labor Statistics (BLS). In addition, the FLSA covers some 18.2 million employees working for 223,587 employers for States, political subdivisions of a State or interstate governmental agencies. *Id.* These figures do not include most Federal employees, for whom the Office of Personnel Management has FLSA jurisdiction.

As indicated in Item 4, employers also need the basic FLSA recordkeeping requirements listed in § 516.2 to meet IRS requirements; however, to account for those rare instances in which some employers might not otherwise keep these records on each and every information item required, the DOL estimates that § 516.2 imposes a unique burden on 10 percent of FLSA covered employers, and each of these employers has one employee. The DOL further estimates each of these employers maintains these records on a semi-monthly basis and each response requires two minutes. (Respondents: 8.3 million private sector employers + 223,587 public sector employers = 8,523,587 total employers. 8,523,587 total employers X 0.1 = 852,359 respondents. Responses: 852,359 respondents X 24 annual responses = 20,456,616 total responses. Burden Hours 20,456,616 total responses X 2 min./ 60 min. per hour = 681,887 hours.)

³ Section 516.2 subsumes all § 516.3 burden, since employers merely substitute the information recorded.

⁴ Section 516.2 subsumes all §§ 516.5; 516.6 burden, as these regulations merely establish the length of time employers must retain records.

⁵ The DOL has received no petitions requesting reconsideration under this regulation. The DOL has estimated that all regulations petitions requesting relief discussed in this supporting statement take approximately 1 hour to prepare, and the agency has issued a “placeholder” of one response per year to cover all these programs.

⁶ Section 516.2 subsumes all §§ 516.11-14 burden, since employers may omit keeping certain records or merely substitute the information recorded pursuant to § 516.2.

⁷ Approximately 60 employers employ 1020 individuals under trip rate plans, and the unique recordkeeping burden is 1 minute per employee each quarter (to keep data as to the basis on which wages are paid, retention of the plan and computation each quarter of average weekly hours of all full-time employees employed under a trip rate plan). (Responses: 1020 employees X 4 responses = 4080 responses. Burden Hours: 4080 responses X 1 min./60 min. per hour = 68 hours.)

516.23; 516.24 ⁸	0	0	0
<u>29 C.F.R §</u>	<u>Respondents</u>	<u>Reponses</u>	<u>Burden Hours</u>
516.25 & 516.26 ⁹	2000	24,000	2000
516.27 ¹⁰	0	0	0
516.28 ¹¹	22,700	544,800	1513
516.29 ¹²	0	0	0
516.30 ¹³	0	0	0
516.31 ¹⁴	NA	NA	NA
516.33 ¹⁵	63,798	89,110	2971
<u>29 C.F.R §</u>	<u>Respondents</u>	<u>Reponses</u>	<u>Burden Hours</u>

⁸ Section 516.2 subsumes all §§ 516.16-18; 516.20-24 burden, since employers merely substitute the information recorded.

⁹ Section 516.2 subsumes many of the records identified in §§ 516.25-26. The DOL estimates 2000 employers use the 29 U.S.C. § 207(g)(1)-(3) overtime exceptions. The DOL further estimates each of these employers pays an average of about 12 individual employees or groups of identically paid employees. The unique burden is about 5 minutes each year per employee or employee group to keep records regarding the method of computation of the rate. (Responses: 2000 employers X 12 employees = 24,000 responses. Burden Hours 24,000 responses X 5 min./60 min. per hour = 2000 hours.)

¹⁰ Section 516.2 and IRS requirements subsume all required items.

¹¹ The DOL estimates the FLSA covers approximately 227,000 employers of tipped employees paid a cash wage of less than \$5.15 per hour; however, as previously noted, the DOL accepts Form IRS-4070 as complying with the § 516.28 requirements. To account for those rare instances in which some employers might not otherwise keep these records in tipped employees, the DOL has estimated the following burdens by using the same methodology as discussed in Footnote 2, with the exception of the additional needed to record tip information (10 sec.). (Respondents: 227,000 employers of tipped employees X 0.1 unique DOL burden = 22,700 respondents. Responses 22,700 X 24 annual = 544,800 total responses. Burden Hours 45,400 responses X 10 seconds /60 sec. per min./ 60 min. per hour = 1513 hours.)

¹² Section 516.2 subsumes all § 516.29 burden, since employers may omit recording certain information in all workweeks except those where a non-exempt employee works overtime.

¹³ Section 516.2 subsumes all § 516.30 burden, since employers or merely substitute the information recorded pursuant to § 516.2.

¹⁴ The DOL clears this information collection under OMB Control No. 1215-0013.

¹⁵ Section 516.2 subsumes most of the information required 526.33 data, as employers merely substitute the information collected, Section 526.33(d), however, imposes a unique requirement to maintain statements from employees for whom the employer claims the section 213(a)(6) exemption applicable to farms that have not exceeded 500 man-days of labor in the preceding calendar year.

The 2002 Census of Agriculture data suggest 34,273 farms have payroll or farm labor contractor expenses between \$50,000 and \$99,999. This is the employer group most likely to maintain these records, since the remaining agricultural employers would clearly know by past employment experience whether they met the man-day count. The BLS reports median hourly earnings of \$8.06 for all workers in the crop and animal farm worker occupations. \$8.06 X 8 hours X 500 man-days X 4 quarters = \$128,960. As most agricultural work is seasonal, the DOL took the next smaller census category (\$50,000-\$99,000). Each respondent will spend approximately 1 minute filing 1.3 responses, as explained below. (Responses: 34,273 respondents X 1.3 responses = 44,555 total responses. Hours burden: 44,555 total responses X 1 min./60 min = 743 hours.)

The payroll and farm labor contractor expenses for this group of employers amount to \$2,359,207,000 (10.7 percent of the total \$22,019,636,000 spent by all farms for labor), according to the Census. Derived from USDA Census of Agriculture farm labor and contract labor cost data available from http://www.nass.usda.gov/Census/Create_Census_US.jsp. See, also <http://www.bls.gov/oes/2004/november/oes452092.htm> and <http://www.bls.gov/oes/2004/november/oes452093.htm>. The DOL has applied the percentage of agricultural businesses estimated to be subject to the recordkeeping requirement (10.7 percent) to the number of farm workers to estimate 29,525 employees are subject to the reporting requirement. The mean average number of agricultural

516.34 ¹⁶	NA	NA	NA
519.7 & 519.17 ¹⁷	256	4584	382
519.9 & 519.19 ¹⁸	0	0	0
520.204 ¹⁹	0	0	0
520.412 ²⁰	0	0	0
520.508 ²¹	480	480	4
525.12 & 525.16 ²²	2102	336,224	168,112
525.18 & 525.22 ²³	0	0	0
530.8 & 530.9 ²⁴	0	0	0
530.11 ²⁵	0	0	0
548.306 ²⁶	0	0	0
552.110 ²⁷	0	0	0
553.50 ²⁸	138,624	19,961,856	166,349

employers per farm worker is approximately 1.5, which further supports the 44,555 responses estimate. See, *Findings from the National Agricultural Workers Survey (NAWS) 2001 – 2002, A Demographic and Employment Profile of United States Farm Workers*, DOL, Assistant Secretary for Policy, March 2005, <http://www.doleta.gov/agworker/report9/chapter4.cfm#employers>. Note: Employee responses shown in Regulatory Information Service and Office of Information and Regulatory Affairs Consolidated Information System (ROCIS) as 1.50906, in order to equal the employer burden. (Employee Responses: 29,525 respondents X 1.50906 responses = 44,555 total employee responses. 44,555 total employee responses X 3 min./60 min. = 2228 hours.) (Total Respondents: 34,273 employers + 29,525 employees = 63,798 total respondents. Total Responses: 44,555 employer responses + 44,555 employee responses = 89,110 total responses. Total Hours Burden: 743 employer hours + 2228 employee hours = 2971 total hours.)

¹⁶ The DOL clears this information collection under OMB Control No. 1215-0175.

¹⁷ Some 256 employers currently employ 4584 full-time students at sub-minimum wages in retail and service establishments, agriculture, or institutions of higher education. The unique recordkeeping requirements imposed by these sections provides for retention of documentation of the status of employees as full-time students in each of the three types of employment. These sections together average an additional recordkeeping burden of five minutes per year per full-time student. (4584 employees X 5 min. = 382 hours.)

¹⁸ The DOL has received no petitions requesting reconsideration under these regulations. See Footnote 5.

¹⁹ The DOL has received no petitions requesting reconsideration under this regulation. See Footnote 5.

²⁰ No employers currently utilize messenger/learner/apprentice sub-minimum certificates.

²¹ The DOL estimates it will issue an average of 480 student learner sub-minimum wage certificates to an equal number of employers each year (actual number of current certificates is 456). This section imposes a minor unique recordkeeping burden of one-half minute per year per student learner. (480 employees X .5 minutes = 4 hours.)

²² The DOL issues approximately 80 workers with disabilities sub-minimum wage certificates to 2100 employers. Employers must develop these records twice per year for each employee covered by these certificates and each response takes 30 minutes to prepare and file (Responses: 2100 X 80 employees X 2 responses = 336,000 total responses. Hours Burden: 168,000 X 0.5 hours = 168,000 hours)

²³ The DOL has received no petitions requesting reconsideration under these regulations. See Footnote 5.

²⁴ Sections 530.8-.9 respectively incorporate the §§ 516.5(a)(6); 516.31 requirements by reference; thus, §§ 530.8-.9 create no unique burden.

²⁵ The DOL has received no petitions requesting reconsideration under this regulation. See Footnote 5.

²⁶ This section creates no additional burden since § 516.25 subsumes the § 548.306 requirements.

²⁷ This section creates no additional burden since the Part 516 burden subsumes the § 552.110 burden requirements, in that employers substitute one record for another.

²⁸ The DOL estimates 62 percent of State and local government employers are subject to this recordkeeping requirement, each subject employer maintains 6 records per semi-monthly pay period and filing each record takes approximately 0.5 minutes. (Respondents: 223,587 total public sector employers X 0.62 = 138,624 respondents. (Reponses: 138,624 respondents X 6 responses X 2 pay periods X 12 months = 19,961,856 responses. Hours burden 19,961,856 total responses X 0.5 min./60 min. per hour = 166,349 total hours.)

553.51 ²⁹	0	0	0
29 C.F.R §	Respondents	Reponses	Burden Hours
570.50 ³⁰	480	480	8
570.72 ³¹	10,050	20,100	335
TOTALS	1,092,910	41,442,427	1,023,678

The FLSA covers 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 been moved in or produced for such commerce by any person. The FLSA also applies to employers of individually covered employees who engage in interstate commerce or in the production of goods for interstate commerce, even when the employees work for a non-covered enterprise. Accordingly, the FLSA covers a wide range of different sizes and types of employers, from a small retail store, to a farm, to a large multi-unit manufacturing enterprise with locations in several states. Any of these employers subject to the FLSA is required to keep the records described in this submission. The DOL has used the September 2006, average hourly rate for production or nonsupervisory workers on nonfarm payrolls of \$16.88 to estimate respondent costs to be \$19,769,991.04. See *The Employment Situation, November 2006*, BLS, (http://www.bls.gov/news.release/archives/empsit_12082006.pdf). Accordingly, we estimate annual respondent costs to be \$17,279,684.64. (1,023,678 hours x \$16.88 = \$17,279,684.64.)

13. The DOL associates no operation or maintenance costs with these recordkeeping requirements.
14. The DOL associates no Federal costs with these recordkeeping requirements.
15. The DOL has adjusted its overall estimates to reflect 5,129,910 additional respondents (1,092,910 current, 5,800,000 previous), 35,642,427 more responses (41,442,427 current, 5,800,000 previous), and an increase of 7880 annual burden hours (1,023,678 current, 1,015,838 previous). The DOL has revised and adjusted the burden for this information collection to reflect an increase in the number of employees subject to the FLSA, to revise the methodology in order better to reflect the frequency of recordkeeping, and more fully to itemize individual requirements. While the DOL discussed the FLSA recordkeeping requirements in prior supporting statements, please note the ROCIS has only reflected estimates for the general recordkeeping requirements discussed in § 516.2. The current submission more fully presents the information into the ROCIS. The reasons

²⁹ This section creates no unique burden since § 516.2 subsumes the § 553.51 requirements. Local agencies availing themselves of the underlying partial overtime exemption substitute the pay period for the workweek.

³⁰ Some 480 employers employ an equal number of student learners under conditions the FLSA regulations generally prohibit. The unique burden for the § 570.50 requirement is one minute per student-learner. (480 X 1 min. = 8 hours.)

³¹ Approximately agricultural 10,050 employers employ 20,100 student learners under conditions the FLSA regulations generally prohibit. The unique recordkeeping burden is one minute per minor per year, for a total annual burden of 335 hours. (20,100 X 1 min/ 60 min. per hour = 335.)

for changes to specific burden estimates (as shown in prior supporting statements) are as follows:

- i. The DOL estimates for the general FLSA recordkeeping requirements reflected in the ROCIS represents a 4,947,647 respondent decrease (852,359 current, 5,800,000 previous), 14,656,616 responses increase (20,456,616 current, 5,800,000 previous), and 333,911 hours decrease (681,887 current, 1,015,798). The DOL has changed the methodology for computing the general burden fully discussed in § 516.2 from one hour per year for 10 percent of covered private sector employers and 60 percent of covered public sector employers to six minutes per week per 0.1 percent of covered employees. The DOL believes the current methodology more accurately reflects the frequency with which employers maintain the records (an average of semi-monthly instead of annually) and the very small percentage of FLSA covered employers not also covered by IRS requirements. The DOL has also changed its methodology for accounting for the percentage of public sector employers with a burden under the DOL regulations from 60 percent to 10 percent, the same rate as for private employers. The revised respondent information also reflects more recent information in the number of employers estimated to be subject to FLSA requirements.
- ii. Section 516.15 – Unchanged hour burden.
- iii. Section 516.26 – Unchanged hour burden.
- iv. Section 516.28 – Unchanged hour burden.
- v. Section 516.31 – 1150 respondent decrease; 4600 responses decrease; 153 hour burden decrease. Correction to show the DOL clears this item under OMB Control No. 1215-0013. *See* 29 C.F.R. 516.0.
- vi. Section 516.33 – 4769 respondent increase; 246,000 responses increase; 1230 hour burden increase. This change reflects a change in the estimated number of agricultural employees for whom employers must maintain records.
- vii. Section 519.7 & 519.17 – 94 respondent decrease; 716 respondents decrease; 60 burden hour decrease. The DOL has changed the burden estimate to reflect a decrease in the actual number of sub-minimum wage certificates employers request under this program.
- viii. Section 520.508 – 56 respondent increase; 80 responses increase; 2 hour burden increase. The DOL has changed the burden estimate to reflect an increase in the actual number of sub-minimum wage certificates employers request under this program.
- ix. Section 525.16 – 4037 respondent decrease; 13,776 responses decrease; 181,888 hour burden decrease. The DOL has changed the burden estimate to reflect a decrease in

the actual number of sub-minimum wage certificates employers request under this program. The DOL has corrected the basis for determining annual responses from one per employee to two per employee.

- x. Section 553.50 – 10,925 respondent decrease; 10,925 responses decrease; and 5463 burden hour decrease. The DOL is adjusting its estimates to reflect that § 516.2 always subsumes the burden created by the § 553.50 recordkeeping requirement. Employers merely substitute the types of records (overtime wages or compensatory time hours) they keep. In addition, several prior submissions have recognized that § 516.2 subsumes half the § 553.50 burden. For several clearance cycles, the DOL estimated that 25 percent of remaining public sector employers might fall under § 553.50, as they might begin to avail themselves of the compensatory time option to compensate overtime hours; however, the prior submissions never adjusted the base from one cycle to the next. Prior submissions also estimated the burden based on one annual response per employer, instead of a basis that reflects employers create these records per employee/per pay period.
 - xi. Section 570.50 – No hours burden change.
 - xii. Section 570.72 – 0 respondent change; 100 responses increase; 2 burden hour increase. The DOL has made this minor change to the burden estimate to adjust for rounding.
- 16. The DOL does not publish this information.
 - 17. The DOL does not seek approval to omit the OMB expiration date for this information collection.
 - 18. The DOL does not seek an exception to the certification requirements.