

SUPPORTING STATEMENT
DISCLOSURES TO WORKERS UNDER THE MIGRANT AND SEASONAL
AGRICULTURAL WORKER PROTECTION ACT
REGULATIONS 29 C.F.R. §§ 500.1, 500.75-.76, and 500.8
Forms WH-501, WH-501S, WH-516, and WH-521
OMB CONTROL NO. 1235-0002

A. Justification

1. Circumstances Necessitating Information Collection

A. Terms and Conditions of Employment

Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. § 1801 *et seq.*, require respondents [*i.e.*, Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs)] to disclose employment terms and conditions in writing to: (1) migrant agricultural workers at the time of recruitment [MSPA section 201(a)]; (2) seasonal agricultural workers, upon request, at the time an offer of employment is made [MSPA section 301(a)(1)]; and (3) seasonal agricultural workers employed through a day-haul operation at the place of recruitment [MSPA section 301(a)(2)]. *See* 29 C.F.R. §§ 500.75-.76. Moreover, MSPA sections 201(b) and 301(b) require respondents to provide each migrant worker, upon request, with a written statement of the terms and conditions of employment. *See* 29 C.F.R. § 500.75(d). MSPA sections 201(g) and 301(f) require providing such information in English or, as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. The DOL prints and makes Optional Form WH-516, Worker Information—Terms and Conditions of Employment, available for these purposes. *See* 29 C.F.R. §§ 500.75(a), 500.76(a).

MSPA sections 201(a)(8) and 301(a)(1)(H) require disclosure of certain information regarding whether state workers' compensation or state unemployment insurance is provided to each migrant or seasonal agricultural worker. *See* 29 C.F.R. § 500.75(b)(6). For example, if state workers' compensation is provided, the respondents must disclose the name of the state workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. *See* 29 C.F.R. § 500.75(b)(6)(i). Respondents may also meet this disclosure requirement, by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed. *See* 29 C.F.R. § 500.75 (b)(6)(ii).

B. Wage Statements

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 FLC, AGER and AGAS 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 FLC 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.*

Regulation 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).

The DOL has previously cleared this information collection under OMB Control Number 1235-0009; however, the agency now proposes to merge the control numbers into a single clearance item.

C. Housing Terms and Conditions

MSPA section 201(c) requires all FLCs, AGERs, and AGASs providing housing to any migrant agricultural worker to post in a conspicuous place at the site of the housing, or present to the migrant worker, a written statement of any housing occupancy terms and conditions. See 29 U.S.C. § 1821(c); 29 C.F.R. § 500.75(f). In addition, MSPA section 201(g) requires these FLCs, AGERs, and AGASs to give such information in English, or as necessary and reasonable, in a language common to the workers. See 29 U.S.C. § 1821(g); 29 C.F.R. §§ 500.1(i)(2), .75(a), (f)-(g). This provision also requires the DOL to make optional forms available to provide the required disclosures. See 29 U.S.C. § 1821(g); 29 C.F.R. §§ 500.1(i)(2), .75(a), (g).

The DOL has previously cleared this information collection under OMB Control Number 1235-0010; however, the agency now proposes to merge the control numbers into a single clearance item.

2. Use

A. Terms and Conditions of Employment

Form WH-516 is an optional form that respondents may use to make the mandatory disclosure of employment terms and conditions in writing to migrant and seasonal agricultural workers, as required by the MSPA. Respondents may either complete the optional form and use it to make the required disclosures to workers or use the form as a written reflection of the information workers may request from employers under the MSPA. Disclosure of the information on this form is beneficial to both parties in that it enables workers to understand their employment terms and conditions, while also providing respondents with an easy way to disclose the information required by the MSPA and its regulations.

B. Wage Statements

Forms WH-501 (English version) and WH-501S (Spanish version), MSPA Wage Statement, are optional use forms that allow a FLC, AGER, or AGAS 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. Again, 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.

C. Housing Terms and Conditions

Form WH-521 is another optional use form that provides an easy method for FLCs, AGERs, and AGASs to post at the site of the housing or present MSPA housing terms and conditions to migrant agricultural workers, as required under the Act. Among other things, the form specifically identifies the name and address of the entity providing the housing, the name of the person in charge of the housing, and any charges for the housing, utilities, and meals. The form also ensures that workers receive information that enables them to understand the terms and conditions under which they may occupy the housing, as the MSPA requires.

3. **Techonology**

In accordance with the Government Paperwork Elimination Act (GPEA), the DOL has posted the various forms on the DOL Web site in a fillable and printable PDF format that allows respondents to enter the required information and provide it to recipients. Please note, however, that while the WHD provides these forms electronically, there is no particular format respondents must use to provide the information other than the MSPA requirement that it be furnished in writing under the circumstances discussed in Item 1.

Therefore, the use of photocopies, computer-generated (*e.g.*, e-mail) or facsimile (fax) disclosures would also satisfy the requirements of the MSPA and its regulations. With respect to GPEA implementation, it should be noted that these forms are third-party disclosures and are not submitted to the government in a way that implicates the PRA. The DOL's Wage and Hour Division (WHD) only reviews this information in connection with an investigation conducted under the MSPA.

A. Terms and Conditions of Employment

The DOL makes Form WH-516 available in both English and Spanish at <http://www.dol.gov/whd/forms/wh516.pdf> and http://www.dol.gov/whd/forms/WH-516_Spanish.pdf. 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.

B. Wage Statements

The DOL makes Forms WH-501 and WH-501S available for downloading and printing off the DOL Web site at http://www.dol.gov/WHD/forms/Form_WH-501.pdf and http://www.dol.gov/WHD/forms/Form_WH-501S.pdf.

C. Housing Terms and Conditions

A FLC, AGER, or AGAS may use Form WH-521 available at <http://www.dol.gov/whd/forms/wh521.pdf> to make the mandatory disclosures regarding housing terms and conditions whenever these entities provide housing to migrant agricultural workers.

4. Duplication

While the MSPA and the Fair Labor Standards Act (FLSA), 29 U.S.C. § 211(c), require maintenance of similar wage payment 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 forms WH-501 and WH-501S to record information that is also maintained for tax purposes, such as employee Social Security Numbers and the employer's Tax Identification Number in order to satisfy the other requirements, where taxing authorities will allow. The IRS requires the employers to submit some information to that agency on such forms such as the Form W-2, which is cleared under OMB Control Number 1545-0008. The information submitted to the IRS is the summary of aggregated information, while the information disclosed to third parties under the MSPA is the detailed information for the pay period; consequently, there is no exact overlap of the information.

Information unique to the MSPA information collections concerning migrant and seasonal agricultural worker employment and housing is not available from any other source, and does not duplicate existing WHD requirements.

5. Minimizing Small Entity Burden

This information collection does involve small businesses engaged in agriculture; however, it does not have a significant economic impact on a substantial number of small entities. While the MSPA and its regulations require respondent disclosure of employment terms and conditions, the use of Form WH-516—which offers an easy method for that disclosure—is optional. Small businesses are able to reduce their burdens by using Form WH-516.

Similarly, use of Forms WH-501 and WH-501S is optional. The forms provide a convenient method for employers, including small businesses, to maintain and provide the information that the MSPA requires.

By completing optional Form WH-521—including all the required information—in English and Spanish, FLCs, AGERs, and AGASs are provided with an easy method for disclosing MSPA required information to workers through posting or presenting the form to workers, which minimizes any burden.

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

The DOL has a statutory responsibility to ensure that FLCs, AGERs, and AGASs disclose employment terms and conditions, statements of earnings, and housing terms and conditions to their migrant and seasonal agricultural workers, as required by the MSPA and its regulations. Less frequent disclosure would prevent the DOL from determining compliance with these MSPA requirements.

The MSPA further makes it mandatory for FLCs, AGERs, and AGASs to maintain copies of statements of earnings provided to migrant and seasonal agricultural workers. *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 associated with this information collection.

8. Public Comments

The DOL published a *Federal Register* Notice inviting public comments during a 60-day period about these information collections. *See* 75 FR 57296 September 20, 2010. The agency received no comments. In addition, regular agency contacts with respondents have indicated the information collection imposes no substantive problems or undue burdens.

9. Payment or Gifts to Respondents

The DOL makes no payments or gifts to respondents of this information collection.

10. Assurances of Confidentiality

The DOL makes no assurances of confidentiality to respondents regarding these information collections, and they are third-party disclosures. As a practical matter, were copies of these disclosures to become part of an investigation file, 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

A. Terms and Conditions of Employment

The DOL bases the following estimates on the number of registered FLCs, AGERs, and AGASs; identified survey data; and enforcement experience.

The MSPA applies to farms nationwide, with the exception of those farms meeting the criteria for one of the exemptions provided in MSPA section 4. Where the MSPA does not apply, there is no obligation to provide these disclosures. For example, MSPA section 4(a)(2) provides an exemption from the Act to farms that have used less than 500 man-days of hired agricultural labor during each calendar quarter in the preceding calendar year; consequently, a farm must effectively employ an average of more than five workers each calendar day in a quarter to reach the 500 man-day threshold for MSPA coverage.

The most current estimate reflecting the number of farms that have hired five or more agricultural workers during the survey year comes from the *2007 Census of Agriculture*.¹ That estimate indicates approximately 107,706 farms are subject to MSPA provisions. Moreover, the *2007 Census* also estimates the number of hired farm/agricultural workers, other than proprietors, to be approximately 1,918,114 (actual census numbers are 406,110 workers at farms reporting five to nine workers and 1,512,004 workers at farms reporting ten or more workers). Information derived from the findings from the most recent *National Agricultural Workers Survey* indicates that farm workers average 1.4 farm jobs each year (3,147,760 jobs). See DOL, Office of the Assistant Secretary for Policy, Office of Programmatic Policy, *Findings from the National Agricultural Workers Survey (NAWS) 2001-2002, A Demographic and Employment Profile of United States Farm Workers*, at 23, http://www.doleta.gov/agworker/report9/naws_rpt9.pdf. Please note, some of these workers may not be (1) migrant or seasonal workers or (2) employed on farms subject to MSPA. The total number of farm jobs, thus, may overestimate burden; however, the total number of farm jobs does provide an outer limit for estimating burden. A typical respondent, therefore, annually will make approximately 25 third-party disclosures under this information collection.

1,918,114 estimated workers x 1.4 farm jobs = 2,685,360 estimated jobs.

2,685,360 estimated jobs/107,706 respondents = 24.9323157 responses per respondent.

The DOL estimates the average disclosure to require 1.3 minutes. It takes approximately 20 minutes to complete the form, and 30 seconds per individual response to photocopy and distribute completed forms. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, making copies, and making the required disclosures. The DOL estimates a total annual burden of 58,340.75 hours.

107,706 respondents x 24.9323157 responses = 2,685,360 responses.

20 min. + (24.9323157 responses x 0.5 min) = 32.4661579 minutes total respondent time.

32.4661579 min./ 24.9323157 responses = 1.2986463 minutes average time per response.

2,685,360 responses x 1.2986463 minutes = 58,122 hours.

Most respondents to this information collection are FLCs, and the DOL has used the median hourly earnings for FLCs during 2009 to estimate the costs associated with respondents' burden hours. See DOL, Bureau of Labor Statistics, *National Sector NAICS Industry-Specific Estimates*; <ftp://ftp.bls.gov/pub/special.requests/oes/oesm09in2.zip>.

58,122 annual burden hours x \$14.45 = \$839,862 (rounded)

¹ The information listed in the *2007 Census of Agriculture* comes from U.S. Department of Agriculture, National Agricultural Statistics Service 2007 reports. Specifically, it appears at *Volume 1—Geographic Area Series Publications—All States by Table—Table 7, Hired Farm Labor—Workers and Payroll: 2007*. The total was arrived at by adding the total number of farms (nationwide), that reported employing five to nine workers (64,593 farms), with the number of farms that reported employing ten or more workers (43,113). The actual total is 107,706.

B. Wage Statements

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.

$1,918,114 \text{ employees} \times 34 \text{ weeks} = 65,215,876 \text{ responses to workers.}$

Approximately 25 percent of these workers are employed by FLCs. USDA, Economic Research Service, Profile of Hired Farmworkers, A 2008 Update, p. 2; <http://www.ers.usda.gov/Publications/ERR60/ERR60.pdf>. 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 total of 81,519,845 responses. $65,215,876 \times 1.25 = 81,519,845$.

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.1235-0018. 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 WH-501 or WH-501S. The DOL estimates the third-party disclosure and recordkeeping burden for these forms, 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 1,358,664 hours.

$81,519,845 \text{ annual responses} \times 1 \text{ minute} = 1,358,664 \text{ hours.}$

The DOL has used the 2009 median hourly wage rate of \$14.45 for FLCs to estimate the costs associated with respondents' burden hours.

$1,358,664 \text{ annual burden hours} \times \$14.45 = \$19,632,695 \text{ (rounded).}$

C. Housing Terms and Conditions

The DOL estimates that FLCs, AGERs, and AGASs disclose housing terms and conditions approximately 1300 times per year and each disclosure takes approximately 30 minutes. Based on investigative experience, the DOL estimates that 80% of FLCs, AGERs, and AGASs providing housing to migrant workers use Form WH-521, while the remaining disclosures (i.e., 20%), which provide the same information, are in an alternative format. Thus, the annual burden is 650 hours.

1300 disclosures x 30 minutes = 650 hours

The DOL estimates annual respondent costs to be \$9393.

650 annual burden hours x \$14.45 = \$9393 (rounded)

GRAND TOTAL BURDEN RESPONSES

2,685,360 (Terms and Conditions of Employment) + 81,519,845 (Wage Statements) + 1300 (Housing Terms and Conditions) = 84,206,505 Total Responses.

GRAND TOTAL BURDEN HOURS

58,122 (Terms and Conditions of Employment) + 1,358,664 (Wage Statements) + 650 (Housing Terms and Conditions) = 1,417,426 Hours.

GRAND TOTAL TIME VALUE

\$839,862 (Terms and Conditions of Employment) + \$19,632,695 (Wage Statements) + \$9393 (Housing Terms and Conditions) = \$20,481,950.

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

A. Terms and Conditions of Employment

WHD enforcement experience indicates respondents make disclosures required under this information collection by providing a photocopy of a completed Form WH-516. Accordingly, the DOL estimates respondent operational and maintenance costs to be \$107,414.04.

2,685,360 copies x \$0.04 per copy = \$107,414 rounded.

B. Wage Statements

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 \$0.04 per response to cover these costs. 81,519,845 annual responses x \$0.04 = \$3,260,794 (rounded).

C. Housing Terms and Conditions

Because the information requested on Form WH-521 is basic and readily known to the respondent, no system or technology is required. WHD enforcement experience indicates respondents make disclosures required under this information collection by providing a printed copy of Form WH-521. Therefore, the DOL estimates respondent operational costs to be \$0.04 per response to cover these costs. 1300 annual responses x \$0.04 = \$52.00.

GRAND TOTAL CAPITAL/START-UP/OPERATION/MAINTENANCE COSTS
\$107,414.04 (Terms and Conditions of Employment) + \$3,260,794 (Wage Statements) +
\$52.00 (Housing Terms and Conditions) = \$3,368,260.

14. Estimated Annual Federal Costs

A. Terms and Conditions of Employment

Federal costs for this information collection involve printing Form WH-516 and mailing it to respondents. The DOL estimates it will print or reproduce approximately 107,706 Forms WH-516 per year, for a total cost of \$54,930.

Printing: 107,706 copies x \$0.04 per copy = \$4,308 (rounded).

Mailing: 107,706 copies x \$0.47 per copy (\$0.44 postage + \$0.03 envelope) = \$50,622 (rounded).

Total Federal costs: \$4,308.24 + \$50,621.82 = \$54,930.

B. Wage Statements

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 \$1400. $35,000 \times \$0.04 = \1400 .

C. Housing Terms and Conditions

Based on the information provided in Item 12 of this supporting statement, the annualized Federal costs involve the printing/reproduction and mailing of 1040 forms (1300 forms x 80%).

Printing or Reproduction: 1040 copies x \$0.04 per copy = \$42 (rounded).

Mailing: 1040 copies x (\$0.44 postage + \$0.03 per envelope) = \$489 (rounded).

Total Federal costs: \$42 + \$489 = \$531.

GRAND TOTAL FEDERAL COSTS
\$54,930 (Employment Terms and Conditions) + \$1400 (Wage Statements) + \$531
(Housing Terms and Conditions) = \$56,861.

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

This submission reflects an overall burden increase of \$81,104,505 responses (from 3,102,000 to 84,206,505), 1,339,886 burden hours 1,339,886 hours (from 77,550 to 1,417,436) and \$3,275,200.

The most significant reason for the change in anticipated burdens for this Control Number is the merger of three individual information collections into one consolidated information collection request. The merger is treated as a miscellaneous discretionary change. The DOL will seek to cancel duplicative Control Numbers upon OMB approval of this request.

Furthermore updated information (e.g., fewer responses resulting in less time burden and an increase in the cost of providing copies for third-party disclosures) resulted in changes for certain burden statistics for the terms and conditions of employment, the information collection originally covered by this Control Number. Those changes have been identified as being due to adjustments in agency estimates.

16. Publishing Data from Information Collection

The DOL does not publish data from 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. This request complies with 5 C.F.R. § 1320.9.

18. Exceptions to Certification Statement

The DOL does not seek exception to the certification requirements.

B. Employing Statistical Methods

This information collection does not employ statistical methods.