

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT

APPLICATIONS TO EMPLOY WORKERS WITH DISABILITIES AT SUBMINIMUM WAGES; HOMEWORKERS; PIECE-RATE MEASUREMENTS; AND HOMEWORKER HANDBOOKS; FULL-TIME STUDENTS AT SUBMINIMUM WAGES IN RETAIL OR SERVICE ESTABLISHMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND AGRICULTURE; APPRENTICES, MESSENGERS, AND LEARNERS (INCLUDING STUDENT-LEARNERS AND STUDENT-WORKERS); FORMS WH-2, WH-46, WH-75, WH-200, WH-201, WH-202, WH-205, WH-209, WH-226, AND WH-226A

OMB CONTROL NUMBER: 1235-0001

The Department of Labor (the Department or DOL) is proposing revisions to this ICR pursuant to its authority under section 14(c) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 214(c), and its implementing regulations at 29 C.F.R. Part 525. Specifically, the Department proposes to revise forms WH-226 (Application for Authority to Employ Workers with Disabilities at Special Minimum Wages) and WH-226A (Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages). The proposed new information collections on these forms will assist DOL's Wage and Hour Division (WHD) in fulfilling its statutory directive to administer and enforce the section 14(c) program, including the new conditions introduced to section 14(c) certificate holders pursuant to the Workforce Innovation and Opportunity Act (WIOA) that become effective on July 22, 2016. As a result, the burden estimates for the proposed revised WH-226 and WH-226A are changing. While the Department is proposing no changes to the other instruments in this collection, we have revised the burden costs using the most up-to-date data available. Note that an online platform is being created so the WH-226 and WH-226A forms may be submitted electronically. The substance of the electronic forms will be substantially the same with minor word changes to accommodate the type of submission (electronic versus paper). The Department intends to submit a non-material change request for this collection upon completion of the electronic submission platform.

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

This information collection pertains to the employment of workers under special certificates issued pursuant to the FLSA, 29 U.S.C. § 201 *et seq.* These provisions relate to restrictions on industrial homework and to the use of special certificates that allow for the employment of categories of workers who may be paid less than the statutory minimum wage to the extent necessary to prevent curtailment of their employment opportunities. Although DOL is only proposing to make changes to the certificate application forms and instructions pertaining to the employment of workers with

disabilities at subminimum wage rates (Forms WH-226 and WH-226A), a brief description of all the information collections covered by this ICR is set forth below.

FLSA section 14(c), 29 U.S.C. § 214(c), provides that the Secretary of Labor may, to the extent necessary to prevent the curtailment of opportunities for employment, issue certificates to permit the payment of subminimum wages to individuals with disabilities whose earning or productive capacities are affected by their disability. Employers use Form WH-226 and the supplemental data form, Form WH-226A, when applying for authorization to employ workers with disabilities in business establishments, in work centers, and in hospitals or institutions at subminimum wages that are commensurate with those paid to workers without disabilities. The commensurate rate is based upon the individual's productivity and the prevailing wage paid to experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity in which the individual under the certificate is employed. This form is also used by school officials in requesting authorization for students with disabilities to participate in school work experience programs and by State vocational rehabilitation counselors and Department of Veterans Affairs officials to grant or extend temporary authorization to employ workers with disabilities at subminimum wage rates. The regulatory requirements concerning the issuance of certificates to employ workers with disabilities under subminimum wages are contained in 29 C.F.R. §§ 525.7, 525.8, 525.9, 525.11, 525.12, and 525.13. Most certificates are valid for two years.

DOL has carefully reviewed the current information collections set forth on Forms WH-226 and WH-226A and determined that significant revisions are necessary in order for the agency to more effectively and efficiently fulfill its statutory directive to oversee and enforce the section 14(c) certificate program. DOL has the legal authority to make these changes and to introduce new information collection requirements upon applicants pursuant to its broad statutory and regulatory authority to enforce section 14(c) by administering the certificate program. See 29 U.S.C. § 214(c); 29 C.F.R. Part 525. The DOL's implementing regulations for the section 14(c) program specifically provide that employers "shall provide answers to all of the applicable questions contained on the application form." 29 C.F.R. § 525.7(b).

Moreover, in recent decades, the United States has experienced significant changes in the realm of employment for individuals with disabilities. These changes include the passage of the Americans with Disabilities Act and its subsequent amendments, the United States Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), Executive Order 13658 (Establishing a Minimum Wage for Contractors) and its corresponding regulations (29 C.F.R. Part 10), the Workforce Innovation and Opportunity Act (WIOA), and state initiatives to either eliminate or reduce the use of subminimum wages or phase out work centers.

Several of these important legal changes directly impact DOL's administration and enforcement of the section 14(c) certificate program. For example, Executive Order 13658 imposes minimum wage rate requirements on section 14(c) certificate holders that enter into new covered service and concessions contracts with the Federal Government. DOL is charged with enforcing the Executive Order's minimum wage requirements. See 79 Fed. Reg. 9851-54; 29 C.F.R. Part 10. WIOA

amends the Rehabilitation Act of 1973, 29 U.S.C. § 720 *et seq.*, to add section 511, which prohibits employers from hiring any individual with a disability who is age 24 or younger at a subminimum wage unless certain conditions, generally related to the furnishing of pre-hire vocational services and career counseling, are met. *See* 29 U.S.C. § 794g. WIOA also provides that employers may not pay or continue to pay any individual with a disability a subminimum wage unless he or she is provided with career counseling services and informed of training opportunities every six months in the first year of employment and annually thereafter. *Id.* In addition, WIOA prohibits State and local educational agencies from contracting with section 14(c) certificate holders to operate a program for individuals age 24 or younger under which work is compensated at a subminimum wage. *Id.* WHD has concluded that current Forms WH-226 and WH-226A should be updated to account for these significant changes.

Accordingly, DOL has reviewed and revised its collection of information on Forms WH-226 and WH-226A to more effectively administer the section 14(c) program. As with the current forms, the revised WH-226 and WH-226A must be completed by all those applying for a certificate to employ workers with a disability at a subminimum wage. This includes both the initial applicants and those applicants who wish to renew their certificate.

The most significant proposed changes to the WH-226 include:

The attestations that are in the current form (Item 15) have been moved to Item 1.

Adding new questions about whether the employer has previously applied for or held a 14(c) certificate in current Items 1-4, (renumbered on the draft forms as Items 2-5) clarifying legal name versus trade name and adding a space for email in item 3, clarifying the legal name and trade name of the parent organization or entity requesting to employ workers with disabilities at subminimum wages in Item 4, and asking if the employer is a State or local educational agency in Item 5.

Removing Item 5 on the current WH-226 relating to the primary disability group employed by the applicant.

Adding a question in new Item 8 about whether the employer currently has or expects to enter into a contract with the Federal Government that is covered by Executive Order 13658.

New Items 9 through 12 (former Items 9 through 11) reduce the number of prevailing wage surveys and time studies collected to one that is representative of hourly paid employees and one for a piece rate job and modify the type of survey samples that may be submitted

(e.g., the prevailing wage survey sample must be from the job or contract on which the largest number of employees were paid on an hourly/piece rate basis).

New Item 13 incorporates former Item 12 and adds a clarifying question about the number of workers for which the facility is a representative payee.

New Item 16 identifies and requests information with respect to requirements for section 14(c) employers under WIOA.

Accompanying instructions for completing the form are expanded to assist applicants in completing the form.

The most significant proposed changes to the WH-226A include:

Removing Item 4 about the end date of the applicant's most recently completed fiscal quarter.

Adding new Item 5 about whether work is performed at the work site/establishment under a contract that may be covered by Executive Order 13658.

Increasing the data collected for each worker with a disability who was paid a subminimum wage rate during the employer's most recently completed fiscal quarter from four categories to eleven. Under the current collection, the Department gathers from the renewal applicant the following limited data on the applicant's employees with disabilities who were paid subminimum wages during the applicant's most recently completed fiscal quarter:

- (1) Name of Worker with a Disability
- (2) Primary Disability
- (3) Type of Work
- (4) Average Earnings per Hour

Under new Item 7 of the revised WH-226A, the Department will gather this information and add to the collection:

- (1) Number of Jobs this Worker Performs at this Worksite
- (2) Average Number of Hours Worked Per Week on All Jobs
- (3) Prevailing Wage Rate for the Job Employee Worked Most Hours at a Subminimum Wage in the Most Recently Completed Fiscal Quarter
- (4) Productivity Measure/Rating for that Job

- (5) Commensurate Wage Rate/Average Earnings Per Hour for that Job
- (6) Total Hours Worked for that Job
- (7) Whether the Worker Performs Work for the Employer at Any Other Worksite

The Department also updated and expanded the instructions for the WH-226A.

The Department believes that the changes to the WH-226 and WH-226A, particularly with respect to the proposal to collect additional wage and work history data for individual workers who were paid a subminimum wage by the employer during the most recently completed fiscal quarter, will better align the collection of data with the statutory authority for the issuance of 14(c) certificates where necessary to prevent the curtailment of opportunities for employment for workers with disabilities. Moreover, such data will provide DOL with additional information to indicate if 14(c) employers are paying proper subminimum wages and are operating in compliance with the new conditions required by WIOA. Importantly, these changes generally reflect a shift in focus towards collecting more individual employee data in the WH-226A that can be used to enhance enforcement. Many of the new data collections, such as the average number of hours worked per week by that worker and the employee's commensurate wage rate for the job which they worked the most hours at subminimum wage, are relevant for purposes of assessing whether the certificate is needed to prevent the loss of employment opportunities for an individual with disabilities. Requiring employers to provide worker-specific data on the type of work each employee performed for the most number of hours at a subminimum wage, the prevailing wage rate for that job, and the productivity measure and commensurate wage rate for that worker will allow WHD to determine if the employer has met the basic requirements for determination of the proper wage rate under the 14(c) regulations, 29 C.F.R. § 525. (WH-226A items 7(e), (g), (h), (i)). Additionally, data on the number of jobs performed by the worker at one worksite and whether the worker performs work for the employer at other worksites (recorded on separate WH-226A forms) will improve WHD's oversight and ability to count an employers' total 14(c) workforce (WH-226A Items 7(b), (k)).

Pursuant to the regulations interpreting section 14(c), DOL may revoke an employer's 14(c) certificate if the employer misrepresents any information provided on the application forms. See 29 C.F.R. § 525.17.

In addition to these employee-specific information collections, the Department has added a question asking whether the applicant has or intends to enter into a contract with the Federal Government that is covered by Executive Order 13658. If an employer is a party to a contract that is covered by the Executive Order, section 14(c) workers performing on or in connection with the covered contract are generally entitled to receive at least \$10.15 per hour for such work. Such information is therefore essential for the Department to determine whether workers employed under a certificate are being paid at proper wage rates. The Department also proposes to add an option to Item 8(b) on the WH-226 to allow an applicant who does not hold a contract with the Federal Government that is covered by the Service Contract Act to indicate whether the applicant

intends to enter into such a contract within the next two years. Such information may be relevant to whether there is a lawful use for a section 14(c) certificate in a state that generally does not allow the payment of wages below the state minimum wage.

The Department will also gather more information from initial applicants about their prospective employees. The current application does not require initial applicants to identify whether they previously held a 14(c) certificate or to submit the number of employees expected to be employed under the certificate until the first certificate renewal – generally two years after the certificate is approved. Asking initial applicants if they previously held or applied for a section 14(c) certificate will facilitate cross-checking of certificate applicants with any past violations, or certificate denials or revocations. Similarly, asking initial applicants to estimate the number of workers who will be paid a subminimum wage, if known, will be particularly useful in planning investigations and will help DOL obtain a better estimate of how many workers may be employed under the 14(c) program at any given point in time, because current data does not include the workers of new certificate holders who have not yet renewed their certificate.

The Department believes that the proposed changes discussed above will result in the collection of data that is better aligned with determining whether a 14(c) certificate is necessary to prevent the curtailment of opportunities for employment for workers with disabilities and enforcing the new conditions on subminimum wage employment created under WIOA and Executive Order 13658. Moreover, while the revisions to the forms will likely increase the burden on employers, the revised application forms and the accompanying revised instructions will provide clarity to employers regarding their application obligations and should improve the quality of information DOL receives.

Although the Department is not proposing to make any changes to the other forms covered by this ICR, a brief description of each of those forms is set forth below.

FLSA section 11(d), 29 U.S.C. § 211(d), authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary or appropriate to prevent the circumvention or evasion of the minimum wage requirements of the Act. DOL restricts homework in seven industries (knitted outerwear, women’s apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries) to those employers who obtain certificates. 29 C.F.R. §§ 530.1, 530.2.

Employers and individual homeworker applicants use Form WH-2 when obtaining certificates to employ individual homeworkers in one of the restricted homework industries. Upon application by the homeworker and the employer, DOL may issue a certificate to the employer authorizing employment of an individual homeworker, provided (1) it is shown that the worker is unable to adjust to factory work because of age and physical or mental disability or is unable to leave home because the worker is required to care for a person with a disability in the home, and (2) the worker has been engaged in industrial homework in the particular industry prior to certain

specified dates as set forth in the regulations or the worker is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency.

Employers use Form WH-46 to apply for a certificate to employ homeworkers in restricted industries. 29 C.F.R. § 530.101(c). The employer application (WH-46) must contain the information prescribed by the regulations including the names, addresses, and languages (other than English) spoken by the homeworkers (29 C.F.R. § 530.102) and certain written assurances (29 C.F.R. § 530.103). Upon approval of the application, DOL issues a certificate authorizing employment of homeworkers in the restricted industry. Unless suspended or revoked, such certificates are valid for two-year periods. 29 C.F.R. 530.101(b).

The regulations require that employers in the restricted industries under the certification program who pay workers based on piece rates have documentation of the work measurements used to establish such piece rates and the circumstances under which such measurements were conducted. The documentation must be retained for three years and made available to DOL upon request. 29 C.F.R. § 530.202(a).

Pursuant to 29 C.F.R. § 516.31(c), an employer must obtain from DOL a separate Homeworker Handbook (Form WH-75) for each homeworker employed. The employer must ensure that all handbooks contain the proper entries concerning hours of work and is required to maintain the completed handbook for two years.

FLSA section 14(a) requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide by regulations or order for the employment of learners, apprentices, and messengers who, under special certificates may be paid less than the statutory minimum wage. This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion, and length of service. The regulations at 29 C.F.R. Part 520 contain the provisions that implement the section 14(a) requirements.

Form WH-205 is the application an employer uses to obtain a certificate to employ student-learners at wages lower than the federal minimum wage.

Form WH-209 is the application an employer uses to request a certificate authorizing the employer to employ learners and/or messengers at subminimum wage rates. Regulations issued by DOL, Office of Apprenticeship (formerly Bureau of Apprenticeship and Training) no longer permit the payment of subminimum wage rates to apprentices in an approved program (29 C.F.R. § 29.5(b)(5)). As a result, DOL has issued no apprentice certificates since 1987. As explained in response to Question 6, the DOL must maintain the information collection in order for the agency to fulfill its statutory obligation under the FLSA to maintain the program.

The use of learner certificates has declined since the 1960s because wage rates have risen in many industries where certificates were previously issued and an adequate supply of experienced workers now exists in most industries. DOL has received no applications for messengers since 1949, but must maintain the information collection in order for the agency to fulfill its statutory obligation under the FLSA.

FLSA section 14(b) requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide certificates authorizing the employment of full-time students at: (1) not less than 85 percent of the applicable minimum wage or less than \$1.60, whichever is higher, in retail or service establishments or in institutions of higher education (29 U.S.C. §§ 214(b)(1), (b)(3); 29 C.F.R. § 519.1(a)); and (2) not less than 85 percent of the applicable minimum wage or less than \$1.30, whichever is higher, in agriculture (29 U.S.C. § 214(b)(2), 29 C.F.R. § 519.1(a)).

The FLSA and the regulations set forth the application requirements (Forms WH-200, WH-201, and WH-202) as well as the terms and conditions for employment of full-time students at subminimum wages under certificates and the temporary authorization to employ such students at subminimum wages. *See* 29 U.S.C. § 214(b)(4); 29 C.F.R. §§ 519.3-.6, 519.13-.16. These subminimum wage certificates generally remain valid for one year. *See* 29 C.F.R. §§ 519.4(b), 519.6(a), 519.14(b), 519.16(a). These subminimum wage programs are designed to increase employment opportunities for full-time students; however, they also set limits on such employment and prescribe safeguards to protect full-time student employees and full-time employment opportunities of other workers. *See* 29 C.F.R. §§ 519.1(b), 519.11(b).

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. For revisions, extensions, and reinstatements of a currently approved collection, indicate the actual use the agency has made of the information received from the current collection.

A. Forms WH-226 and WH-226A

Forms WH-226 and WH-226A allow employers to obtain authorization to pay individuals with disabilities that affect their productivity for the work to be performed at subminimum wages. *See* 29 U.S.C. § 214(c); 29 C.F.R. Part 525. Most renewing applicants submit forms WH-226 and WH-226A every two years. Without the information collection, employers would have no means to apply for authorization to pay workers with disabilities at subminimum wages. Additionally, the Department uses the information collected on these forms to assist in employer investigations to ensure employers are in compliance with section 14(c).

The additional questions related to the new requirements for 14(c) employers under WIOA (discussed in detail below) will not only help WHD to determine employer compliance with these new requirements, but also serve to educate employers about these obligations.

B. Forms WH-200, WH-201, WH-202

Forms WH-200, WH-201, and WH-202 are voluntary-use application forms an employer may prepare and sign to request a certificate authorizing the employment of full-time students at subminimum wages. Both the applicant and DOL maintain a copy of any submitted form. The DOL reviews each form to determine whether to grant or deny subminimum wage authority.

A retail, service, or agricultural employer uses Form WH-200 to request authority to employ more than six full-time students at subminimum wages for up to a monthly number of hours not exceeding: (1) 10 percent of the total monthly hours worked by all employees of the employing establishment; or (2) specific percentages, based on historic employment data, of total employee hours.

An institution of higher education uses Form WH-201 to request authority to pay subminimum wages to its full-time student employees. The reverse side of Form WH-201 also serves as a “Notice of Temporary Authority” poster that provides temporary authority for the institution to employ full-time students at subminimum wages for a period of up to one year after forwarding the properly completed application to DOL, provided that, within 30 days of the forwarding, the Administrator of the Wage and Hour Division does not deny the application, issue a certificate with modified terms or conditions, or expressly extend the 30-day period of review.

A retail, service, or agricultural employer uses Form WH-202 to request authority to employ up to six full-time students at subminimum wages throughout the employer’s enterprise on any given day. The FLSA specifically requires this information collection. *See* 29 U.S.C. § 214(b)(4)(D).

C. Forms WH-2, WH-46, piece rate measurements and Form WH-75

Employers use Form WH-2 to obtain authorization to employ individual industrial homeworkers in the restricted industries. The DOL reviews the forms employers submit in determining whether to grant homework authorization. The FLSA permits such employment only under certificates issued by DOL. *See* 29 U.S.C. § 211(d); 29 C.F.R. Part 530.

Form WH-46 is an application to employ homeworkers. The application process provides DOL with a means of identifying employers of homeworkers and individual homeworkers in the restricted industries who may not be otherwise identified. The application process also provides an early opportunity for DOL to assist employers in complying with homeworke requirements.

The requirement that employers record and retain documentation of the method used to establish piece-rates is necessary so that the DOL can verify that rates were properly determined and resulted in wage payments to homeworkers at a rate at least equal to the FLSA minimum wage for all hours worked in a workweek. *See* 29 C.F.R. § 530.202. Failure to require such documentation would impair the DOL’s ability to ensure FLSA compliance.

Form WH-75 (Homeworker Handbook) provides a mechanism to ensure that employers fulfill their obligation to obtain and record accurate hours worked information whenever they distribute homework to employees and collect the complete work. Homeworkers record the information as

they perform the work. See 29 C.F.R. §§ 516.31(c), 530.103(d)-(e). Individual homeworkers retain the Handbooks until completed and then return the Handbooks to the employer. The individual homeworkeer also provides the Handbook to the employer for transcription at the end of each pay period. See 29 C.F.R. § 516.31(c). The DOL examines the information in the Handbooks when conducting homeworkeer investigations to determine FLSA compliance. Failure to require an employer to collect and retain this information would impair the DOL's ability to ensure FLSA compliance.

D. Form WH-205

Employers use Form WH-205 to obtain certificates to employ student-learners at wages lower than the federal minimum wage. Form WH-209 is the application an employer uses to request a certificate authorizing the employer to employ learners and/or messengers at subminimum wage rates. Regulations issued by DOL's Office of Apprenticeship no longer permit the payment of subminimum wage rates to apprentices in an approved program (29 C.F.R. § 29.5(b)(5)). As a result, DOL has issued no apprentice certificates since 1987. As explained in our response to Question 6, the DOL must maintain the information collection in order for the agency to fulfill its statutory obligation under the FLSA to maintain the program. The use of learner certificates has declined since the 1960s because wage rates have risen in many industries where certificates were previously issued and an adequate supply of experienced workers now exists in most industries. DOL has received no applications for messengers since 1949, but must maintain the information collection in order for the agency to fulfill its statutory obligation under the FLSA.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

DOL makes Forms WH-226 and WH-226A and instructions for completing them available in fillable Adobe PDF format for downloading, completing online and printing from our Internet website at: http://www.dol.gov/whd/forms/fts_wh226.htm . Respondents must mail a completed application to DOL in order to apply for authorization to pay subminimum wages. The Department recognizes the value of technology in reducing burden on respondents in completing these forms, and is currently reviewing options for electronic submission of the information collection. However, this work will not be completed until after the current revisions are submitted to OMB for approval. The Department intends to submit a non-material change request to this collection upon completion of the electronic submission platform.

DOL makes Form WH-2 and instructions for completing the form available in fillable Adobe PDF format for downloading, completing online and printing from our Internet website at: http://www.dol.gov/whd/forms/fts_homeworkeer.htm .

DOL has posted Forms WH-46 and WH-75 and accompanying instructions on the DOL website at: http://www.dol.gov/whd/forms/fts_homeworker.htm . The forms are fillable and printable and may be downloaded from the DOL website. Respondents must mail the application to DOL upon completion. In accordance with the Paperwork Reduction Act, DOL has assessed the practicability of developing an on-line submission option for WH-46 and WH-75 and determined it is not practical to do so. The Regulations at 29 C.F.R. § 530.102 require that the initial request for certification or renewal (Form WH-46) shall be signed by the employer. In order to meet this regulatory requirement, the DOL would need to obtain a Public Key Infrastructure (PKI) certificate for each authorized employer at a cost of \$25.00-\$35.00 per certificate compared to the mailing cost of \$0.49 for each mailed submission. Further, the DOL would have to develop the website for employers to submit the information. Development costs would easily exceed the total annual mailing cost of \$11.25 for all employers filing a paper Form WH-46 and would not be justified for an information collection that receives fewer than 100 annual responses. The piece-rate measurement provisions impose a recordkeeping requirement that utilizes Form WH-75. The form is fillable, printable, and posted at: <http://www.dol.gov/whd/forms/index.htm> in both English and Spanish. The DOL only reviews this information in connection with an investigation under the FLSA. As a result, an on-line submission option is not practicable for these recordkeeping requirements.

The DOL enters information collected on Forms WH-200, WH-201, and WH-202 into the DOL Certificate Processing System (CPS). The CPS allows the DOL to send a preprinted application that only requires updates to certain specified information (e.g. changed information, signing and recording total employment hours during the most recent twelve months) to an employer applying to renew an existing authorization. In compliance with the Paperwork Reduction Act, the DOL makes Forms WH-200, WH-201, and WH-202 available in PDF fillable format for printing and downloading at: <http://www.dol.gov/whd/forms/fts.htm> .

The DOL also assessed the practicability of developing an on-line submission option for these forms but determined it is not practical to do so. The regulations at 29 C.F.R. §§ 519.3(a) and 519.13(a) require the application (i.e., Forms WH-200, WH-201, and WH-202) to be signed by an authorized representative of the employer. In order to meet this requirement, the DOL would need to obtain a PKI certificate for each authorized employer representative, costing the agency between \$25.00 and \$35.00 for each PKI certificate as compared to the \$0.49 mailing cost for each mailed submission. The DOL would also need to develop the website for employers to submit the information. Development costs would easily exceed the total annual mailing cost for all employers filing a paper Forms WH-200, WH-201 or WH-202 and not be justified for an information collection that receives less than 400 annual responses.

Forms WH-205 and WH-209 are rarely used forms. The DOL accepts fax transmissions of the completed applications associated with this information collection and has posted Form WH-205 and the accompanying instructions on the DOL Web site at: http://www.dol.gov/whd/forms/fts_wh205.htm . The DOL has not posted Form WH-209, because the agency does not anticipate receiving any requests under the messenger/learner program. The DOL has assessed the practicability of developing an on-line submission option for this information collection and has determined it is not practical to do so. Form WH-205 must be

signed by the employer, the appropriate school official, and the student-learner. See 29 C.F.R. § 520.501(b). The DOL would need to obtain a PKI certificate for each authorized employer in order to meet this regulatory requirement. The DOL has been informed that each PKI certificate would cost the agency between \$25.00 and \$35.00, compared to the mailing cost of \$0.49 for each mailed submission. The DOL would also need to develop the website for employers to submit the information. Development costs would easily exceed the total annual mailing cost for all employers filing a paper Form WH-205 and not be justified for an information collection that receives less than 1000 annual responses.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 above.

The Department has carefully reviewed the proposed changes to the WH-226 and WH-226A, and determined that these information collections do not duplicate existing requirements. No similar information is available from any other source.

5. If the collection of information has a significant impact on a substantial number of small businesses or other small entities describe the methods used to minimize burden.

While these information collections, particularly the WH-226 and WH-226A, may involve a substantial number of small businesses or non-profit agencies, the collections do not have a significant impact on those small entities. Forms WH-226 and WH-226A collect information necessary for the Department to conduct effective oversight of the certificate process. Specifically, the data collection gathers additional information on individual workers in order to better assist the agency in preventing abuse of a vulnerable worker population. On the revised forms, DOL has provided detailed item-by-item instructions and online tools such as wage calculators to assist all employers, including small entities, in completing these forms and complying with the statutory and regulatory requirements.

The use of Forms WH-200, WH-201, and WH-202 to apply for authority to employ full-time students at subminimum wages is voluntary, and automation of the certificate renewal process reduces burden for more than 75 percent of all respondents. Forms WH-205 and WH-209 are rarely used. Currently, there are no WH-209 certificates in effect but DOL must maintain the information collection to fulfill its statutory obligations under the FLSA. Forms WH-2, WH-46, and WH-75 require the minimum necessary information to ensure FLSA compliance with respect to homework.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

With respect to Forms WH-226 and WH-226A, the DOL could not effectively administer the subminimum wage program for workers with disabilities if the agency were to collect the information less frequently. Section 14(c) authorizes the Secretary to administer the section 14(c) certificate program to the extent necessary to prevent the curtailment of employment opportunities. 29 U.S.C. § 214(c)(1), and employers must have authorization from the Department to pay subminimum wages. The statute and regulations create significant information and recordkeeping burdens for employers that pay subminimum wages to individuals with disabilities, and the Department's information collection requires employers to submit only a portion of that information to carry out the Department's certificate processing and enforcement obligations.

With respect to the WH-2 form, DOL could not monitor employment in the restricted homework industries if the agency were to collect the information less frequently. With respect to Forms WH-46 and WH-75, the DOL cannot verify compliance with the FLSA in homework employment with less frequent information collections. The requirement to retain contemporaneous records provides the employer with the information needed to ensure FLSA compliance. *See* 29 C.F.R. § 516.31(c). As a matter of the statutory provisions, the FLSA generally uses the workweek as the basis for determining proper wage payment. *See* 29 U.S.C. § 207(a); 29 C.F.R. §§ 778.103 - 105.

With respect to Forms WH-200, WH-201, and WH-202, applications for full-time student certificates are annually required as prescribed by the regulations. *See* 29 C.F.R. §§ 519.4(b), 519.6(a), 519.14(b), 519.16(a). Less frequent application would make it difficult for the DOL to ensure employers do not exceed the allowances for employing full-time students at subminimum wages established under the FLSA. *See* 29 U.S.C. § 214(b)(4). With respect to Forms WH-205 and WH-209, the DOL could not meet the requirements of FLSA section 14(a) or effectively administer these subminimum wage programs were this information to be collected less frequently. The Act specifically lists the occupations covered by this information collection.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special conditions associated with these information collections.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record-keeping, disclosure, or reporting format (of any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On August 6, 2015, the Wage and Hour Division (WHD) published a 60-day notice (80 FR 47004) in the Federal Register, proposing revisions to the section 14(c) certificate application forms (WH-226 and WH-226A) and seeking public comment on the proposed changes. WHD made available a draft of the proposed revised forms as well as a draft of the Paperwork Reduction Act (PRA) supporting statement that will be submitted to the Office of Management and Budget (OMB) requesting approval for the PRA package. When the comment period closed on October 5, 2015, WHD had received 41 timely comments. Each of these comments is loaded into ROCIS for review.

On May 27, 2015, the Wage and Hour Division hosted listening sessions for both certificate holders and worker advocates with respect to the overall view of the 14(c) program for subminimum wages for workers with disabilities. On May 29, 2015, the Wage and Hour Division hosted a second certificate holder listening session.

Comments submitted during the sixty-day comment period were primarily concerned with the modified and expanded data collection aspects of the proposed revisions. While some commenters

were concerned about the implications of the streamlined data collection and the burden on applicants, a number of commenters also suggested collecting additional data for specific purposes. A number of comments addressed the section 14(c) certificate program broadly and expressed concern that the program not be phased out, but did not address the information collection aspects of the certificate application process.

A. Burden on Applicants

Nine employer commenters raised broad concerns about the cost and hour burden of gathering the individual worker data on the proposed WH-226A and generally in completing the forms. Primarily, employers reasoned that the information would be difficult to obtain, making completing the proposed certificate application time consuming, and that the information would not assist the review of applications for certification or enforcement. While some comments pointed to particular items on the WH-226A that would be burdensome, most comments that addressed burden simply asserted that any additional questions would increase the time for applicants to complete the form, although none of these comments provided alternatives to reduce the burden or a reasonable estimate regarding how much time the additional data collection reporting may require.

With some modifications described below, the Department has decided to retain most of the questions as proposed in the documents accompanying the sixty day notice and posted to the WHD website for review. Although the Department recognizes that the additional data collected for individual workers increases the reporting burden on employers, these questions target information that employers are already required to collect to comply with section 14(c) and that is highly relevant to section 14(c) enforcement. Some comments seemed to confuse the existing regulatory recordkeeping requirements with the burden of reporting that data on the application forms. Moreover, the Department has off-set some of this burden by collecting fewer samples of prevailing wage surveys and time studies than previously required with the WH-226 (one of each for one hourly and one piece rate job, instead of the four surveys, three hourly time studies, and four piece rate work measurements required on the current form). The proposed forms also provide substantially more detailed item-by-item instructions designed to help applicants understand and complete the forms.

By collecting more information about individual workers, the Department will better align the data collection with the statutory authority for the issuance of 14(c) certificates where necessary to prevent the curtailment of employment for workers with disabilities. Additional individual worker data will support targeted enforcement efforts, improve WHD's ability to create statistics about the 14(c) program, and assist WHD in evaluation of the section 14(c) certificate program.

B. Questions Related to WIOA Requirements and Competitive Integrated Employment

Several worker advocacy groups supported the enhanced emphasis on the collection of individual worker information and suggested the collection of additional data to ensure compliance with requirements for 14(c) certificate holders under WIOA. Employers were primarily concerned with the burden of reporting new data.

1. Three commenters were concerned about requiring applicants to provide the date of hire and whether the worker was age 24 or younger when the employer first paid a subminimum wage.

These commenters noted that workers may have been employed for many years, perhaps by other employers, and that obtaining such information may be difficult.

The Department has modified and moved the questions related to WIOA from the WH-226A to a new section on the WH-226 (Item 16). The questions concerning date of hire and age will be replaced by questions on whether the employer has complied with the requirements under WIOA to review and maintain documentation for covered youth and to review documentation and provide information to all employees. The employer also must list each worker who is age 24 or younger and answer for each whether the employer has verified and maintained documentation showing that the worker received all services and counseling as required by WIOA before paying the worker a subminimum wage, or indicate that the documentation is not required for that individual.

These data collections are relevant for purposes of enforcement of the new requirements imposed on section 14(c) certificate holders under WIOA and to bring these new requirements to employers' attention. The Department has the authority to ask questions related to WIOA compliance because WIOA requires employers to comply with certain requirements prior to paying a subminimum wage pursuant to a section 14(c) certificate.

2. Two commenters representing worker advocacy groups suggested additional questions regarding whether the worker is currently working or in the past has worked in competitive integrated employment.

The Department has declined to add these additional questions because employers are not required to keep this information. The potential benefits of obtaining such information does not outweigh the additional burden on applicants.

3. Two commenters representing worker advocacy groups suggested adding additional language to the representations and written assurances on the form to assure compliance with WIOA. One commenter also suggested adding an attestation emphasizing that a section 14(c) certificate may be revoked if the employer misrepresents any information on the application form.

The Department has declined to add additional attestations to the application. Because the attestations impose legal obligations on applicants, WHD does not find it appropriate to add any attestations regarding statutory requirements that are not enforced by the Department and established by a Department regulation. Therefore, WHD has not added attestations related to *Olmstead v. L.C.* or the ADA because they are outside of the Department's enforcement authority. The revised form does include, however, specific language in the instructions for the form reminding employers of their responsibility to comply with all other applicable Federal laws, including the ADA, WIOA, and the *Olmstead* decision.

Regarding the proposal to remind employers that a certificate may be revoked for misrepresentations, while the section 14(c) regulations would permit adding this attestation, the

Department does not believe that this attestation is necessary. The consequences of misrepresentations on the form are already clear in the regulations and by the applicant's act of signing the form. The current language of the representations and written assurances includes, "I certify that . . . all information given in the application and attachments are true . . . and I acknowledge that the authorization . . . is subject to revocation in accordance with the provisions of 29 C.F.R. part 525." Section 525.17 provides that misrepresentations may result in revocation. To emphasize the importance of the attestations and written assurances, the Department moved this item and the signature of the authorized representative to the top of page one of the WH-226.

3. Two commenters representing worker advocacy groups suggested adding an attestation to assure compliance with the provision of WIOA that prohibits a local educational agency from contracting with a section 14(c) certificate holder for the "purpose of operating a program for an individual who is age 24 or under which work is compensated at subminimum wage." 29 U.S.C. 794g(b)(2).

As stated above, WHD does not find it appropriate to add such an attestation, but the Department has added a question to the WH-226 that asks the applicant to identify if the employer is a local or state educational agency. By having employers identify themselves as educational agencies, WHD can use that information to more accurately identify the certificate holders that are subject to the restrictions under WIOA.

C. Reasonable Accommodations

Eight commenters noted the proposed addition of WH-226A Item 7(d) asking if the individual worker was provided reasonable accommodations. Six worker advocates supported the question but only with several additional questions, such as whether the need for an accommodation has been assessed and a list of the specific reasonable accommodations provided. Two commenters specifically suggested that this question be removed if additional questions seeking more specific information are not added. One commenter objected to the question, stating that the information is not useful for WHD enforcement of section 14(c).

The Department has removed the question in response to the comments. The Department is persuaded by the comments that the question may fail to obtain useful data and instead create confusion as to which agency enforces the ADA, because the Equal Employment Opportunity Commission is authorized to enforce the ADA. Adding additional questions as proposed by the commenters would require seeking substantially more information that employers are not required to retain under the FLSA, and the benefits would not outweigh the increased burden on applicants.

D. Primary Disability Group Employed

One commenter criticized the proposal to remove the request on the current form for the primary disability group employed by the applicant (current WH-226 Item 5). The commenter stated that the question was relevant to improve awareness, to allow WHD to determine whether the workers' disabilities impair their work performance, and to allow WHD to evaluate whether proper accommodations are being granted.

The Department has decided to remove the question as was proposed in the documents accompanying the sixty day notice. The new questions on the supplemental form WH-226A require employers to provide more specific data about each worker's primary disability that affects the worker's productivity for the job on which the employee performed the most hours at a subminimum wage. This data will be more useful for enforcement and management of the program than the data currently collected in the aggregate by Item 5.

E. Government Contracts

1. Three commenters addressed WH-226 Item 7 (this will be Item 8 on the revised forms) concerning whether employers without current government contracts intend to bid on SCA or Minimum Wage E.O.-covered contracts in the next two years. Two commenters expressed general support for questions concerning government contracts while the third commenter argued that knowledge of intention does not change compliance requirements and that it is highly improbable that an employer without a Federal government contract will obtain one.

The Department has elected to retain these questions as proposed in the documents accompanying the sixty day notice. The current application form already requires applicants to identify whether they perform SCA-covered work, and these questions are a minor addition. This additional information would be useful in states where state law eliminates or limits the payment of wages below the state minimum wage.

2. Two commenters recommended asking whether an SCA contractor is an AbilityOne contractor. The commenters suggest that this question is relevant because of the scrutiny of AbilityOne by the WIOA-mandated Advisory Committee on Increasing Competitive Integrated Employment of Individuals with Disabilities (ACICIEID) and the new requirements for government contractors under the Minimum Wage Executive Order (E.O. 13658).

The Department has declined to adopt this suggestion because whether an SCA contractor is an AbilityOne contractor is not relevant to WHD's certificate application processing and enforcement of section 14(c), SCA, or the Minimum Wage E.O. 13658. The pertinent information is whether the employer has an SCA contract subject to a prevailing wage rate.

F. Prevailing Wage Surveys and Time Studies

Five commenters expressed a variety of opinions, objections, and suggestions concerning the proposed revisions for the submission of prevailing wage surveys and time studies. One of these commenters generally supported the reduction in the amount of data requested.

1. Two commenters expressed concern with the addition of a checkbox to indicate that a prevailing wage survey was impractical. Both commenters voiced concern that the option to use Bureau of Labor Statistics (BLS), private or State employment data would allow employers to circumvent their responsibility to determine the prevailing wage.

The Department has retained this checkbox as proposed in the documents accompanying the sixty day notice. The use of BLS or other employment data is specifically allowed by the section 14(c)

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regulations (29 C.F.R. 525.10) and such sources should provide more accurate wage rates than employers obtain through local surveys. In our enforcement experience, employer surveys are often inaccurate. The Department has added an instruction that wage rates must be provided for experienced rather than entry level workers.

2. Three commenters addressed the use of the term “contract” when requesting prevailing wage data for the “contract on which the employer employed the largest number of workers at hourly subminimum wage rates.” These commenters noted that some employers may not have outside contracts, or alternatively may employ the largest number of their workers on non-contract work such as janitorial work for the employer, or working in retail stores or in the production of goods for sale directly by the employer.

The Department agrees that clarification of the data requested is warranted, and inserted revised language to clarify the employer provide data for the relevant job or contract.

3. Two commenters objected to the reduction of the number of prevailing wage surveys and time studies collected. Both commenters suggested instead that WHD increase the number of prevailing wage surveys and time studies collected. One commenter suggested requesting all the prevailing wage information for jobs performed by workers with disabilities for the past two years and eliminating the separate prevailing wage and time study data requested for jobs paid hourly and piece rates. Another commenter suggested that WHD randomly select applicants to submit data for at least 15 percent of the workers with disabilities paid subminimum wages or four workers, whichever is greater.

The Department has retained these questions as proposed in the documents accompanying the sixty day notice and posted on the WHD website for review. WHD reduced the collection of this information to balance the addition of new individual worker data collections. Additionally, WHD has determined, based on its experience certifying applications, that there is little added value in reviewing multiple surveys and time studies. Where an employer does not understand time study or survey principles, or makes good faith errors, a single study and a survey are sufficient to reveal the problem. During the application review process, WHD may request additional samples from the employer if it is deemed necessary to do so. Further, if an employer is investigated by WHD, all prevailing wage and time study records are subject to inspection for the relevant investigation period.

G. Employer Status as a Guardian; Funding Questions

1. One worker advocate suggested asking for the number of workers with disabilities for which the employer (or the employer’s staff), serves as a guardian because it could indicate a conflict of interest.

The Department declines to add this question because it is not relevant to WHD’s certificate application processing or section 14(c) enforcement.

2. One worker advocate requested that the Department ask for information concerning employer funding sources, including Medicaid or Vocational Rehabilitation funds or charitable contributions, reasoning that if an employer receives such funding, “for the purpose of providing training or additional supervision, then it may be harder for the employer to show that it cannot employ the same individual while paying them above minimum wages.” Other suggested additions to the form WH-226A include sources of funding for the employer and information concerning any charges being made by the employer for services to the worker.

The Department declined to make these additions. The source of employer funding is not pertinent to WHD's certificate application processing nor is it relevant to the authority to pay subminimum wages. Without significantly more information, which WHD may not be authorized to collect, it would not be possible for WHD to use this information to determine whether a certificate is necessary to prevent curtailment of employment opportunities. Regarding charges made to employees, Item 14 (Item 13 on the current form) asks whether the employer makes deductions for transportation, rent, meals, etc.

H. Additional Data from Initial Applicants

One commenter suggested that, in addition to WHD's proposal to ask initial applicants if they previously held a section 14(c) certificate, WHD also require all applicants to state whether a previous application has been denied or whether a certificate has previously been revoked.

The Department has retained this question as proposed in the documents accompanying the sixty day notice, posted for review on the WHD website. WHD can use its certificate processing system to cross-check previous certificate holders against previous applications, violations, denials, or revocations.

I. Modernizing Language

1. Two commenters objected to the change from use of the term "special minimum wage" to "subminimum wage." Both commenters pointed out that the statute and the regulations both use special minimum wage.

The Department has retained this language as proposed. The term subminimum accurately identifies wages that are below the Federal minimum wage or below SCA wage determination rates. WHD wishes to avoid the negative perceptions that some people associate with the word special in relation to workers with disabilities.

2. Another commenter suggested that the term "supported employment" be removed from the forms. The commenter notes that WIOA provides a definition of supported employment that does not comport with workers employed in sheltered employment because it includes only workers in integrated employment. The commenter suggests replacing the term with "off-site/enclave."

The Department agrees with the suggestion and has modified the questions and instructions in response. To avoid conflicting with the WIOA definition, the Department replaced the term "supported employment site" on the forms with "off-site work location" as a broader term to

encompass any location where section 14(c) workers are working that is not their primary employer's premises or employer-owned branch site.

3. Several commenters noted that a question asking for the total number of workers with disabilities employed by the employer is misleading because it does not specify the total number of workers who are paid a subminimum wage.

The Department agrees with the comment and has revised the questions. The Department agrees that WH-226 Items 7(b) and (c) should be clarified to specify the total number of workers with disabilities who were employed at subminimum wages during the specified period.

The Department concludes that the recommended changes will result in the collection of data that is better aligned with WHD's strategic and enforcement goals. The data collected will be helpful in determining whether a section 14(c) certificate is necessary to prevent the curtailment of opportunities for employment for workers with disabilities and to enforce the new conditions on subminimum wage employment created by WIOA that go into effect July 22, 2016. While the revisions to the forms will increase the burden on applicants, the increased burden is justified by the improved quality of information WHD will receive. Likewise, the improved instructions and streamlined prevailing wage and time study information collection should reduce the paperwork burden on both applicants and WHD.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

DOL offers no payments or gifts to respondents in connection with these information collections.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

DOL makes no assurances of confidentiality to respondents. As a practical matter, DOL would only disclose information collected under these requests in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552; the Privacy Act (PA), 5 U.S.C. § 552a; and related regulations, 29 C.F.R. Parts 70-71.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The questions concerning individual workers' disabilities on Forms WH-2, WH-226, and WH-226A may be considered sensitive. However, this information is necessary to ensure that the DOL only issues certificates for individuals who meet the provisions established by the law. The

Department also will inquire about workers paid a subminimum wage by the employer who are age 24 or younger. The Department believes this is not a sensitive question as it does not inquire about the specific age of the worker. Moreover, this question is necessary to determine whether certificate applicants are subject to certain obligations under WIOA regarding payment of subminimum wage to persons age 24 or younger. The FOIA and PA protect the information and regulate the circumstances under which DOL may disclose such information. With respect to Forms WH-46, WH-75, WH-200, WH-201, WH-202, WH-205, and WH-209, the applications and/or records contain no sensitive questions.

12. Provide estimates of hour burden of the collection. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.**

A. Forms WH-226 and WH-226A

DOL estimates 1,500 respondents (120 initial and 1,380 renewal) use Form WH-226 one time annually and an initial respondent requires 50 minutes to complete the form and 75 minutes for the renewal applicant to complete the form. This results in 1,825 annual reporting burden hours (1,380 renewal forms x 75 minutes/60 minutes per hour = 1,725 burden hours + 120 initial forms x 50 minutes/60 minutes per hour = 100 hours). TOTAL burden hours for the WH-226 is 1,825.

DOL estimates the 1,500 respondents to Form WH-226 will complete 6,000 copies of Form WH-226A annually and respondents will require on average 120 minutes (2 hours) to complete the form. The Department noted that the GAO report published in 2001 indicates that businesses on average will employ just three of these workers.¹ For such employers, it will take much less than 120 minutes to complete the form. The report also indicates that other employers, such as community rehabilitation programs, could employ 80 or more of these subminimum wage workers. For these employers, completion of the WH-226A will likely take a minimum of 2 hours and likely more the first time they complete the revised form. The Department therefore submits as an average of two hours to complete the WH-226A. This results in 12,000 annual reporting burden hours (6,000 forms x 120 minutes/60 minutes per hour = 12,000 burden hours).

BURDEN FOR FORMS WH-226 AND WH-226A: 7,500 RESPONSES, 13,825 HOURS.

¹ See GAO Report: Special Minimum Wage Program, Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight. (September 2001).

B. Form WH-2²

DOL has not received any completed WH-2 forms requesting to employ an individual homeworker over the past three years. DOL has entered a placeholder of 1 respondent and 1 response to estimate the use of Form WH-2. DOL estimates that a respondent requires 30 minutes to complete the form. This results in 1 annual reporting burden hours (rounded). (1 form x 30 minutes = 1 hour.)

BURDEN FOR FORM WH-2: 1 RESPONSE, 1 HOUR.

C. Form WH-46

Reporting Requirements Form WH-46: DOL estimates that each employer of homeworkers in the restricted industries will spend approximately 30 minutes preparing an application (WH-46) to employ homeworkers. Approximately 10 employers have applied and received certificates to employ homeworkers in the restricted industries over a two-year period (average of 5 per year). This results in an annual burden of 3 hours (5 applications x 30 minutes = 3 hours rounded).

BURDEN FOR FORM WH-46: 5 RESPONSES, 3 HOURS.

D. Piece rate measurements for homeworkers.

Recordkeeping requirements pursuant to 29 CFR 530.202: DOL estimates each employer in the restricted industries subject to the certification program will complete documentation on three piece-rate work measurements annually and that each such documentation will take approximately one hour. Total annual burden is 151 hours. (50 employers x 3 measurements x 1 hour). In addition the filing of each piece-rate work measurement will take approximately 1 minute, for an additional annual burden of approximately 1 hour (50 piece-rate work measurements x 60 seconds = 1 hour).

BURDEN FOR PIECE RATE MEASUREMENT: 50 RESPONDENTS, 150 RESPONSES, 151 HOURS.

E. Form WH-75

The Department estimates that the number of participants performing homework for pay in all occupations likely not to be exempt from the FLSA was 334,200 (approximately 111.4 million workers x .003) persons last year. This information collection only applies to persons who work at home and are subject to the FLSA wage provisions. The Department notes that the United States Census Bureau estimates approximately 390,000 workers in manufacturing work at home. See Home Based

² Note: ICR 1235-0001 is not due for renewal at this time; therefore, only the estimated number of responses for the WH-226 and WH-226A are updated in this supporting statement.

Workers in the United States: 2010, Table 6, p. 9. U.S. Census Bureau.
<http://www.census.gov/prod/2012pubs/p70-132.pdf>

However, some of these employees may be exempt from the FLSA requirements. As a result, the Department utilized the same mathematical equation that was used in our estimate during the 2011 renewal period. (Total workers 111.4 million x .003 = 334,200 home workers). The increase in burden results in the increase of overall workers since the last renewal period.

The DOL estimates an average burden of 30 minutes per Homeworker Handbook, with each respondent maintaining four handbooks annually. This results in a total annual burden of 6,795 hours. 334,200 respondents x 4 handbooks = 1,336,800 responses. 1,336,800 responses x 30 minutes = 40,104,000 minutes/60 minutes per hour = 668,400 hours. Moreover, the DOL estimates it takes an average of 30 seconds to file each completed Homeworker Handbook for an additional burden of approximately 11,140 hours (1,336,800 handbooks x 30 seconds (40,104,000 seconds/60 seconds per minute = 668,400 minutes/60 minutes per hour = 11140 hours)). Total = 668,400 hours + 11,140 hours = 679,540 hours.

BURDEN FOR WH-75: 1,336,800 RESPONSES, 679,540 HOURS

F. Forms WH-200, WH-201, WH-202

The DOL estimates 535 employers annually submit applications for authority to employ full-time students at subminimum wages. Approximately 387 retail, service, or agricultural employers seek authority to employ more than six full-time students (Form WH-200); 17 institutions of higher education seek authority to employ their own full-time students (Form WH-201); and 131 retail, service, or agricultural employers seek authority to employ six or fewer full-time students (Form WH-202).

Form WH-200. The DOL receives about 50 initial applications annually. An employer must complete the required information requested on Form WH-200 during the initial application. The DOL estimates it takes 30 minutes to complete this application collection.

50 applications x 30 minutes (= 1500 minutes/60 minutes per hour) = 25 hours.

The DOL receives approximately 337 renewal applications annually. A renewal applicant need only make necessary corrections in the pre-printed information, record the total hours of employment under the certificate in the most recent twelve months, and sign the form. The DOL estimates it takes 10 minutes to complete a renewal application.

337 renewal applications x 10 minutes (3370 minutes/60 minutes per hour) = 56 hours (rounded).

Filing a copy of Form WH-200 takes approximately one minute.

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387 applications (initial and renewal) x 1 minute (387 minutes/60 min. per hour) = 6 hours (rounded).

Form WH-201. The DOL annually receives approximately 7 initial applications requiring the employer to complete Form WH-201. The DOL estimates it takes 30 minutes to complete the information collection and post the notice to employees providing temporary authority to pay full-time students at subminimum wages.

7 initial applications x 30 minutes (210 minutes/60 min. per hour) = 4 hours (rounded).

The DOL annually receives approximately 10 renewal applications. The institution makes necessary corrections in the pre-printed information, lists the number of full-time students employed at subminimum wages at that campus during the current and most recent 12-month periods, and signs the form. The DOL estimates it takes 15 minutes to complete the renewal application.

10 renewal applications x 15 minutes (150 minutes/60 min. per hour) = 3 hours (rounded).

Filing each certificate copy of Form WH-201 takes about one minute.

17 applications (initial and renewal) x 1 minute = .5 hour.

Form WH-201 Total Annual Reporting and Recordkeeping burden = 8 hours (rounded).

Form WH-202. The DOL annually receives approximately 60 initial applications requiring the employer to complete Form WH-202. The DOL estimates it takes 20 minutes to complete an initial Form WH-202.

60 initial applications x 20 minutes = 20 hours (60 applications x 20 minutes per application/60 minutes per hour = 20 hours).

The DOL annually receives approximately 71 renewal applications. The employer need only make necessary corrections in the pre-printed information, record the total hours of employment under the certificate in the most recent twelve months, and sign the form. The DOL estimates it takes 10 minutes to complete a renewal application.

71 renewal applications x 10 minutes = 12 hours (rounded).

Filing a copy of Form WH-202 takes approximately one minute.

131 applications (initial and renewal) x 1 minute = 2 hours (rounded).

Form WH-202 Total Annual Burden = 34 hours.

BURDEN FOR FORMS WH-200, WH-201, AND WH-202: 535 RESPONSES, 129 HOURS.

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G. Forms WH-205 and WH-209

Form WH-205, Application to Employ Student Learners at Subminimum Wages. The DOL receives approximately 316 applications annually. The agency estimates it takes 30 minutes for each respondent to complete the form. This results in an annual reporting burden of 158 hours. (316 applications x 30 minutes/60 min. per hour).

Form WH-209, Application for a Certificate to Employ Learners/Messengers at Subminimum wages.

The DOL estimates it takes approximately 20 minutes to complete a learner/messenger application; however, the agency anticipates the submission of no applications and currently associates no reporting burden or respondent costs with this aspect of the information collection. The FLSA narrowly defines what types of firms are eligible to acquire special certificates for messengers, and the DOL has issued no certificates for messengers since 1949.

Application to Employ Apprentices at Subminimum Wages. The DOL estimates that the submission of a copy of an approved apprenticeship program takes approximately one minute. The DOL currently associates no annual burden and no respondent costs for this component of the information collection since Office of Apprenticeship regulations preclude approving apprenticeship programs employing apprentices at subminimum wage rates.

BURDEN FOR FORMS WH-205, WH-209, AND APPRENTICES: 316 RESPONSES, 158 HOURS.

TOTAL BURDEN:

Activity	Number of Respondents	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)
WH-226/226A	3,000	7,500	Various	13,825
WH-2	1	1	One hour	1
WH-46	5	5	30 minutes	3
Piece rate	50	150	One hour	151
WH-75	334,200	1,336,800	30 min	679,540
WH-200/201/202	535	535	various	129

WH-205/209	316	316		158
Unduplicated Totals	338,107	1,345,307	-	693,807

ESTIMATED TOTAL BURDEN COST IN DOLLARS

The FLSA covers employers with employees engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or otherwise working on goods or materials that have moved in or were produced for such commerce by any person. Accordingly, the FLSA covers a wide range of different sizes and types of employers, ranging from small individually owned retail stores to large manufacturing enterprises with plants in several states. Any one of these employers, or a designated employee, may choose to complete the information collections. DOL has used the February 2016 average hourly rate for production or nonsupervisory workers on nonfarm payrolls of \$21.32 to determine respondent costs. (See The Employment Situation, March 2016, Table B-8,. <http://www.bls.gov/news.release/pdf/empsit.pdf> (03042016)). This pdf is uploaded as a supplementary document for your convenience into the ROCIS system.

693,807 x \$21.32 = \$14,791,965. (rounded).

13. **Provide an estimate for the total annual cost burden to respondents or record-keepers resulting from the collection of information (Do not include the cost of any hour burden shown in Items 12 and 14).**
- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory**

impact analysis associated with the rulemaking containing the information collection, as appropriate.

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Employers use their own existing records to obtain the data necessary to complete these information collections. These information collections require no extraordinary systems or technologies to collect data and thus respondents incur no costs, except the respondent's time (accounted for in Question 12 of this supporting statement) and mailing costs for completed applications.

Forms WH-226, and WH-226A: \$3,045.00 (1,500 mailings x (\$2.00 postage + \$0.03 per envelope) = \$3,045.00.)

Forms WH-2, WH-46 and WH-75: \$10.40. (20 applications x (\$0.49 postage + \$0.03 per envelope) = \$10.40.)

Forms WH-200, WH-201, and WH-202: \$278.20. (535 mailings x (\$0.49 postage + \$0.03 per envelope) = \$278.20.)

Form WH-205: \$164.32. (316 mailings x (\$0.49 postage + \$0.03 per envelope) = \$164.32.)

Form WH-209, Application for a Certificate to Employ Learners/Messengers at Subminimum Wages.

No estimated costs for the Form WH-209 information collection.

TOTAL START-UP, CAPITAL, MAINTENANCE, AND OPERATIONS COSTS:
\$3,498. (Rounded)

- 14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

A. WH-46, WH-75. Annual federal costs with respect to Applications to Employ Homeworkers (WH-46). The processing of the application involves the services of a GS-13, Step 4 Analyst at the DOL Chicago, Illinois District Office (\$48.21 per hr.) and requires an estimated average of thirty minutes to review the form for approval or denial. Currently, approximately 10 employers

have applied and received certificates to employ homeworkers in the restricted industries for a two-year period, an average of 5 applications per year. Accordingly, the DOL estimates the annual Federal cost for processing the applications to be \$121(rounded) (5 applications x ½ hour x \$48.21 per hr. = \$120.53).

The DOL associates no federal costs associated with piece-rate measurements for homeworkers.

Based on certification data, there is an average of four homeworkers for each employer subject to this information collection. Taking into account the number of employers in the certification program (10) and estimated number of employers currently requesting Handbooks (Form WH-75) in the unrestricted industries annually, the DOL estimates it will receive 448 requests for Homeworke Handbooks. Previous experience indicates that annually each homeworke uses an average of four Handbooks. Accordingly, the DOL will annually print and mail an estimated 1,792 Handbooks (448 homeworkers x 4 = 1,792). The DOL estimates annual Federal costs as follows:

Printing	(1,792 Handbooks x .54 per)	\$968 (rounded)
Postage	(448 mailings @ \$1.22)	\$547 (rounded)

TOTAL FEDERAL COSTS FOR APPLICATIONS AND HANDBOOKS: \$1636.

B. WH-2. Annual federal costs for information collections associated with Form WH-2 are zero.

C. WH-226 and WH-226A. DOL estimates the annualized federal cost for Forms WH-226 and WH-226A to be \$101,460. This includes the cost of printing, mailing and processing the forms. DOL estimates 1,500 WH-226 forms (1,380 renewal and 120 initial) per year with a printing cost of \$.03 per page. Mailing costs for the WH-226 are \$.49 per mailing. The 1,380 renewal forms are processed by a GS-11/Step 4 federal employee who earns \$33.82 per hour in Chicago, Illinois. The 120 initial forms are processed by a GS-11/4 employee who earns \$33.82 per hour in Chicago, Illinois. Renewal forms take approximately 30 minutes to process. Initial application forms take approximately 30 minutes to process.

Printing:	WH-226	1,500 forms x .03 per page and six pages = \$270
	WH-226A	1,500 forms x .03 per page and three pages = \$135

Mailing: 1,500 forms x \$.52 = \$780 (.49 cents postage plus .03 cents per envelope)
(Note that both forms are sent in same envelope).

Processing:

Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act
1235-0001
September 2016

WH-226 1,500 forms x 30 minutes (45,000 min./60 min. per hour = 750 hours
x \$33.82 = \$25,365 (rounded))

WH-226A 6,000 forms x 30 minutes per form ((180,000/60 min per hour) =
3,000 hours (rounded) x \$33.82 = \$101,460

TOTAL FEDERAL COST FOR FORMS WH-226 AND WH-226A: \$270 + 135 + 780 + 25,365 +
101,460 = \$128,010

There is no separate mailing cost for Form WH-226A as these forms are included with Form WH-226 as a supplement. The forms may also be printed from the DOL web site.

D. WH-200, WH-201, WH-202. Annual federal costs for information collections for information collections include printing, mailing, processing and filing approximately 389 applications (WH-200, WH-201, WH-202). Mailing and filing each require about one minute per form. Processing the forms takes approximately 10 minutes per initial application and 5 minutes per renewal application. A GS-9 federal employee in Chicago, Illinois performs this work. A GS-9, Step 4 employee earns \$27.96 per hour.

Printing: 535 Forms x 2 pages x \$.03 per page = \$32.10

Postage: 535 mailings x \$.49 postage + \$.03 per envelope = \$278.20

Mail Processing: 1 minute x 535 forms x \$27.96 = \$249.31

Filing: 1 minute x 535 forms x \$27.96 = \$249.31

Form Processing:

10 minutes x 117 initial applications x 27.96 = \$545.22

5 minutes x 418 renewal applications x \$27.96 = \$973.94

TOTAL ANNUAL FEDERAL COST (WH-200, 201, 202) = \$ 2328.08

E. Form WH-205. Form WH-205 applications are processed in Chicago, Illinois and the DOL bases federal costs on the services of a GS-12/Step 4 employee (\$40.54 per hour) who analyzes and approves the initial applications for certification. Analysis of each application takes approximately 10 minutes.

316 applications x 10 minutes = 53 hours (rounded)

53 hours x \$40.54 (GS 12/Step 4) = \$2149 (rounded)

F. WH-209. Form WH-209, Application for a Certificate to Employ Learners/Messengers at Subminimum Wages. No annual costs to the federal government.

G. TOTAL ANNUAL FEDERAL COST ALL FORMS THIS ICR:

WH-46 and WH-75	\$1,636
WH-226 and WH-226A	\$128,010
WH-200/201/202	\$2,328
WH-205	\$2,149
WH-209	\$0
WH-2	\$0
Total	\$134,123

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14.

The only significant program changes reported in Items 13 or 14 are related to the forms WH-226 and WH-226A. There are no program changes or significant adjustments affecting public burdens to report on any of the other information collections in this ICR.

The DOL has carefully reviewed the current information collections set forth on Forms WH-226 and WH-226A and determined that significant substantive revisions are necessary for the agency to more effectively and efficiently fulfill its statutory directive to oversee and enforce the section 14(c) certificate program, including the new conditions introduced to section 14(c) certificate holders pursuant to WIOA. As discussed in response to Question 1 above, DOL has also determined that several revisions and additions are necessary to address important legal changes that have directly impacted DOL's administration and enforcement of the section 14(c) certificate program.

The proposed revisions to Forms WH-226 and WH-226A generally increase the amount of data collected, particularly for renewal applicants. Some revisions, however, streamline and reduce information currently collected. For example, the proposed revisions to the WH-226 include revisions to Items 9-12 on the form, to reduce the number of prevailing wage surveys and time studies collected. By streamlining that collection, DOL is able to significantly reduce the data collection from as many as four prevailing wage surveys and seven time studies, while obtaining

information that is more useful for enforcement. The proposed revisions to the WH-226A include collecting additional wage and work history information about each individual worker with a disability who was paid subminimum wages during the employer's most recently completed fiscal quarter, which will increase the burden for renewal applicants. As discussed above, this data is needed to effectively oversee and enforce the section 14(c) certificate program and to ensure that employers fulfill their statutory obligations under WIOA.

- 16. For collections of information whose results are planned to be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

The list of 14(c) certificate holders (relating to the WH-226 and WH-226A) is published on the WHD website <http://www.dol.gov/whd/workerswithdisabilities/certificates.htm>. The name and address of the employer is listed along with the start and end date of the certificate, information about the number of works with disabilities paid at a subminimum wage rate by the certificate holder during the certificate holder's most recently completed fiscal year, and whether the employer indicated having any SCA or PCA contracts at the time of application. The webpage is updated at least twice each year, although WHD is in the process of determining if the webpage can be updated more frequently. The information from the remaining collections is not published.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

DOL is not requesting an exception to the requirement to display the expiration date on this information collection. This request complies with 5 C.F.R. § 1320.9.

- 18. Explain each exception to the certification statement, "Certification for Paperwork Reduction Act Submissions."**

DOL is not requesting an exception to the certification requirements for these information collections.

B. EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.