SUPPORTING STATEMENT
FAIR LABOR STANDARDS ACT RECORDKEEPING REQUIREMENTS
REGULATIONS 29 C.F.R. PARTS 10, 505, 516, 519, 520, 525, 530, 547, 548, 549, 551, 552, 553, 570, 575, 794
OMB CONTROL NO. 1235-0018

This ICR is being amended to reflect burden increases as a result of the Final Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees. On March 13, 2014, President Obama signed a Presidential Memorandum directing the Department to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards (79 FR 18737, April 3, 2014). On July 6, 2015, the Department issued a Notice of Proposed Rulemaking (NPRM), Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (80 FR 38516, July 6, 2015). The Department is publishing the Final Rule and therefore this package is submitted in coordination with the Final Rule. No new recordkeeping requirements are part of this Final Rule. However, because the pool of employees for whom an employer is required to make and maintain records increases due to this Final Rule, this ICR reflects the increase in burden hours.

A. Justification

1. Circumstances Necessitating Information Collection

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

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. § 211(c). A FLSA covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id*.

The U.S. Department of Labor (DOL) has promulgated regulations 29 C.F.R. part 516 to establish the basic FLSA recordkeeping requirements. The DOL has also issued specific sections of regulations 29 C.F.R. parts 505, 519, 520, 525, 530, 547, 548, 549, 551, 552, 553, 570, 575, and 794 to supplement the part 516 requirements and to provide for the creation and maintenance of records relating to various FLSA exemptions and special provisions. The following is a listing of the specific regulatory provisions establishing

FLSA recordkeeping requirements and information collections related to youth employment and various FLSA overtime exemptions.

As noted previously, the Department is publishing a Final Rule that will update collections in 29 C.F.R. part 516.

A. Regulations 29 C.F.R. § 505.5 identifies the records that National Endowments for the Arts and Humanities grant recipients must keep. Generally, § 505.5(b) creates no unique burden, since 29 C.F.R. part 516 and, to the extent there is concurrent jurisdiction, part 1904 subsume the requirements of this section. *See* B, below, and 29 C.F.R. § 1904.4. The DOL clears the recordkeeping requirements of § 1904.4 under OMB Control No. 1218-0176; consequently, those provisions are not part of this package.

B. Various sections of regulations 29 C.F.R. part 516, Records to Be Kept by Employers, list the records employers must create and maintain for various types of employees:

i. Section 516.2—records on employees subject to 29 U.S.C. § 206; 207(a), respectively establishing Federal minimum wage and overtime requirements. The regulation requires employers to keep each employee's full name as used for Social Security purposes (and symbol used, if the name is not used elsewhere in the record), home address, sex and occupation, date of birth if under 19 years of age, identified workweek, regular rate of pay, hours worked each day and total for the week, total weekly straight time earnings, total weekly overtime premium pay, additions and subtractions from pay, total earnings, date of payment, and any back wage payments. Employers may use schedules for employees working fixed times and record only any variations from the schedule. Most other part 516 requirements provide for employers to maintain a portion of the data required under § 516.2.

ii. Section 516.3—records when claiming the 29 U.S.C. § 213(a)(1) minimum wage and overtime pay exemption applicable to executive, administrative, professional, and outside sales personnel. To the § 516.2 provisions, employers add the basis for pay and total pay for the pay period and may omit the regular rate of pay, hours worked, and the additions and subtractions from pay.

iii. Section 516.5—records employers must preserve for a period of three years: payroll records; certain collective bargaining agreements, plans, trusts, employment contracts, memoranda, written agreements, sub-minimum wage certificates, notices used to determine an employee's pay rate, and certain sales and purchase records.

iv. Section 516.6—records employers must preserve for a period of two years: time and earnings records; wage rate tables; and order, shipping, and billing records.

v. Section 516.9—petitions for relief, when seeking authority to maintain alternative records, stating the reason(s) for the request.

vi. Section 516.11—records when claiming the 29 U.S.C. §§ 213(a)(3); 213(a)(5), 213(a)(8); 213(a)(10); 213(a)(12); 213(d) minimum wage and overtime exemptions. FLSA sections 13(a)(2) and 13(a)(4), 29 U.S.C. §§ 213(a)(2) and 213(a)(4), have been repealed since the DOL promulgated this regulation. Employers need not maintain when the workweek starts, regular rate of pay, hours worked each day and total for week, total straight time earnings, total overtime premium pay, additions and subtractions from pay, total earnings, and date of payment.

vii. Section 516.12—records when claiming the 29 U.S.C. §§ 213(b)(1)-(3); 213(b)(5); 213(b)(9)-(10); 213(b)(15)-(17); 213(b)(20)-(21); 213(b)(24); 213(b)(27)-(28) overtime pay exemptions that apply to various types of work. Employers need not maintain certain records related to the regular rate of pay and total overtime premium pay.

viii. Section 516.13—records when claiming the 29 U.S.C. § 213(b)(13) overtime pay exemption applicable to livestock auction employees. Employers need not maintain records related to the regular rate of pay and total overtime premium pay but add the hours worked in agriculture and in connection with livestock operations.

ix. Section 516.14—records when claiming the 29 U.S.C. § 213(b)(4) overtime pay exemption applicable to country elevator employees. Employers need not maintain records related to the regular rate of pay and total overtime premium pay but add names of employees not covered by the FLSA and information that supports the elevator meets the "area of production" requirements of 29 C.F.R. part 536.

x. Sections 516.15—records when claiming the 29 U.S.C. § 213(b)(11) overtime pay exemption applicable to local delivery employees. Employers need not maintain records related to the regular rate of pay and total overtime premium pay but add the basis for determining wages, a copy of the Wage and Hour Division (WHD) Administrator's findings on the plan, plan changes, list of persons employed pursuant to the plan, and quarterly computations of each employee's average weekly hours worked.

xi. Section 516.16—records when claiming the 29 U.S.C. § 207(i) overtime pay exemption applicable to commission employees of a retail or service establishment. Employers need not maintain records related to the regular rate of pay and total straight/overtime time earnings but add a notation on the employee's records indicating the pay basis and keep a copy of the agreement or understanding and the records separately showing commission and non-commission straight time earnings.

xii. Section 516.17—records when claiming the 29 U.S.C. § 213(b)(6) overtime pay exemption applicable to seamen. Employers need not maintain records of when the workweek starts, regular rate of pay, total hours worked for the week, total weekly straight time earnings, and total weekly overtime premium pay but add the basis for the wages, total hours worked during the pay period, total wages for the pay period, and information identifying the vessel on which employed.

xiii. Section 516.18—records when claiming the 29 U.S.C. §§ 207(m); 213(h)-(j) partial overtime pay exemptions that respectively apply to employees employed in certain tobacco, cotton, sugar cane, and sugar beet services. The employer notes the weeks during which it claims the applicable exemption.

xiv. Section 516.20—records when claiming the 29 U.S.C. § 207(b)(1)-(2) partial overtime pay exemptions applicable to employees covered by certain collective bargaining agreements. The employer adds records to show wage calculations made under the exemption.

xv. Section 516.21—records when claiming the 29 U.S.C. § 207(b)(3) partial overtime pay exemptions applicable to employees of bulk petroleum dealers. The employer adds records to show wage calculations made under the exemption.

xvi. Section 516.22—records when using 29 U.S.C. § 207(n) to exclude certain hours worked from overtime calculations for employees engaged in charter activities of carriers. The employer records hours worked in charter activities and keeps a copy of the employment agreement used to claim the exemption, including the date of the agreement.

xvii. Section 516.23—records when using 29 U.S.C. § 207(j) to pay overtime to hospital and residential care employees on the basis of the employee working more than eight hours in a day and 80 hours in a 14-day work period. Employers substitute the work period for the workweek to document FLSA compliance, show any daily overtime calculations, and maintain a copy of the employment agreement/understanding used to claim the exemption, as well as the date of the agreement.

xviii. Section 516.24—records when using 29 U.S.C. § 207(f) to provide a weekly guarantee of pay of not more than 60 hours to employees whose duties necessitate irregular hours of work that otherwise would cause an employee's wages to vary widely from week to week. The employer need not maintain records of daily/weekly straight time and weekly overtime earnings but would record the amount of the weekly guarantee and total weekly pay in excess of the guarantee, and keep a copy of the agreement of memorandum documenting the agreement to pay on this basis.

xix. Section 516.25—records when using 29 U.S.C. § 207(g)(1)-(2) to pay an "applicable rate" for overtime work. Employers substitute recording the basis and amount of the rate, number of overtime hours worked at the applicable rate, date of the agreement or understanding to use the "applicable rate" method during overtime hours, and any periods covered by the agreement or understanding for the regular rate of pay as normally computed or overtime premium pay normally required by § 516.2.

xx. Section 516.26—records when using 29 U.S.C. § 207(g)(3) to pay employees for overtime work at premium rates based on a "basic rate" equivalent to each employee's average hourly earnings. Employers must maintain the basis and amount of each rate, the computation establishing the rate, the nature and amount of any payment not included per 29 U.S.C. § 207(g)(3), the representative period used to calculate the amount, and the agreement or understanding authorizing the pay method.

xxi. Section 516.27—records when using 29 U.S.C. § 203(m) to make deductions from wages for board, lodging, or other facilities. When an employer wishes to make these types of deductions that will result in the employee receiving cash wages of less than the minimum wage and/or the employee is eligible for overtime pay, the employer must maintain itemized records showing the nature and amount of the expenditures entering into the computation of reasonable cost for the deductions.

xxii. Section 516.28—records on tipped employees, as defined in 29 U.S.C. § 203(t). The employer must note that the employee's wages are in part determined by tips, the amount of tips reported to the employer (may consist of IRS Form 4070), how much of an hourly tip credit, if any, the employer claims against the minimum wage, and daily hours worked broken out by tipped and non-tipped occupations.

xxiii. Section 516.29—records when claiming the 29 U.S.C. § 213(b)(29) partial overtime pay exemption applicable to employees of a private entity operating an amusement or recreational establishment located in a National Park or National Forest or on land in the National Wildlife Refuge System. The employer need only record the regular rate of pay during overtime workweeks when the exemption does not apply.

xxiv. Section 516.30—records when using 29 U.S.C. § 214 authorized certificates to pay sub-minimum wages to certain employees (*i.e.*, learners, apprentices, messengers, students, or workers with disabilities). The employer must maintain a record of employees paid under these certificates.

xxv. Section 516.31—records when employing industrial homeworkers. The DOL clears this recordkeeping requirement under OMB Control No. 1235-0001. The requirement is not part of this package.

xxvi. Section 516.33—records when claiming the 29 U.S.C. §§ 213(a)(6); 213(b)(12) minimum wage and/or overtime pay exemptions applicable to agricultural employees. An employer claiming the section 213(a)(6)(A) exemption need not record birth dates of persons who are at least 19-years old (a further recordkeeping exemption exists for parents and guardians), and straight time earnings; however, the employer must annotate the names of persons for whom it claims the exemptions, as well as keep employee statements indicating the number of weeks they were employed and date of birth for any employee under age 18-years and employed on a school day and/or in a hazardous occupation.

xxvii. Section 516.34—records when using 29 U.S.C. § 207(q) to exclude employer required remedial education or training in other basic skills as hours worked. FLSA § 7(q) provides a partial overtime exemption that allows an employer to employ any employee who lacks a high school diploma or whose reading level or basic skills is at or below the eighth grade level for up to ten overtime hours per week without paying the usually required half-time premium, if the employee is receiving remedial education during such overtime hours. The employer-provided remedial education must be designed to provide up to eighth grade level basic skills or to fulfill the requirements for a high school diploma or General Educational Development (GED) certificate and may not include job-specific training. The employer must also compensate for time spent in such remedial education at no less than the employee's regular rate of pay.

Regulations 29 C.F.R. § 516.34 requires employers using this partial overtime exemption to indicate the hours an employee engages in exempt remedial education each workday and total hours each workweek. The employer may either state the hours separately or make a notation on the payroll. The subject information collection relates only to the § 516.34 requirements. The requirement is not part of this package.

C. In 29 C.F.R. part 519, Employment of Full-Time Students at Sub-minimum Wages, regulations 29 C.F.R. §§ 519.7; 519.17 by reference incorporate part 516 into their requirements, and they provide for the additional records retail or service establishments and agricultural employers must keep when paying sub-minimum wages to full-time students employed under certificates issued pursuant to section 214. Section 519.7(b)(3) requires retail and service establishments and agricultural employers to keep a record of the monthly hours of employment of full-time students at sub-minimum wages along with the total hours of employment during the month of all employees in the establishment. Section 519.17(a)(3) requires institutions of higher education to keep records of the total number of all full-time students employed at the campus of the institution at sub-minimum wages and the total number of all employees at the campus to whom the FLSA minimum wage provisions apply.

Regulations 29 C.F.R. §§ 519.9; 519.19 provide for filing written requests for reconsidering decisions made about these sub-minimum wage certificates. The DOL

clears the applications, Forms WH-200 and WH-202, used to apply for these sub-minimum wage certificates under OMB Control No. 1235-0001, and they are not part of this current submission.

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

Section 520.204 provides for filing reconsideration requests on actions the WHD takes with regard to these sub-minimum wage certificate applications. The DOL clears the applications, including Forms WH-205 and WH-209, under OMB Control No. 1235-0001; consequently, they are not part of this package.

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

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

E. In 29 C.F.R. part 525, Employment of Workers with Disabilities under Special Certificates, § 525.12 specifies the terms and conditions of special minimum wage certificates granted to employers of workers with disabilities, and § 525.16 lists the records that a community rehabilitation program (CRP) must maintain when using section 214 certificates to pay sub-minimum wages to clients with disabilities. In addition to the requirements of part 516, § 525.16 requires a CRP to maintain records (1) verifying the workers' disabilities and individual productivity, and (2) documenting prevailing wages paid to non-disabled workers performing similar work in the vicinity as well as their production standards and supporting documentation. Sections 525.18 and 525.22 provide a process by which (1) any party aggrieved by actions taken by the DOL under the regulation or (2) any employee employed pursuant to one or more of these sub-minimum wage certificates or the parent or guardian of such an employee may file a petition for review with the WHD or DOL, respectively. The DOL clears the application (Form WH-226) for these sub-

minimum wage certificates under OMB Control No. 1235-0001, and it is not part of this package.

F. In 29 C.F.R. part 530, Employment of Homeworkers in Certain Industries, § 530.9 incorporates the § 516.31 requirements by reference. Section 530.8 reiterates the § 516.5(a)(6) requirement that employers retain homeworker certificates for three years. Section 530.11 allows parties aggrieved by WHD action on a certificate to petition for review and relief. As previously noted, the DOL clears the additional recordkeeping requirements for a homework handbook under OMB No. 1235-0001. *See* Item 1 B xxv of this supporting statement.

G. FLSA section 7(e)(3)(b) provides that, when computing the regular rate of pay for overtime purposes, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide thrift or savings plan or trust , as defined in these regulations

Bona Fide Thrift or Savings Plan: Regulations 29 C.F.R. part 547 contain the requirements for a "bona fide thrift or savings plan" under section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA). *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. §§ 547.0-.2. To compute the amount of overtime due to an individual, it is necessary to first compute the "regular rate" that the individual earned. *See* 29 U.S.C. § 207 (a); 29 C.F.R. §§ 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide thrift or savings plan, as defined in these regulations. *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. § 547.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide thrift or savings plan. 29 C.F.R. § 547.1(b).

Bona Fide Profit-Sharing Plan or Trust: Regulations 29 C.F.R. part 549 contain the requirements for a "bona fide profit-sharing plan or trust" under section 7(e)(3)(b) of the FLSA. *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. §§ 549.0-.3. To compute the amount of overtime due to an individual, it is necessary to first compute the "regular rate" that the individual earned. *See* 29.U.S.C. § 207 (a); 29 C.F.R. §§ 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide profit-sharing plan or trust as defined in these regulations. *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. § 549.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide profit-sharing plan or trust. 29 C.F.R. § 549.1(b).

H. In 29 C.F.R. part 548, Authorization of Established Basic Rates for Computing Overtime Pay, § 548.306 discusses the average earnings for the year or quarter year preceding the current quarter when employers pay employees overtime work based on a basic rate equivalent to an employee's average hourly earnings in accordance with 29 U.S.C. § 7(g)(3). Section 548.306(f) by reference incorporates the part 516 requirements for recordkeeping. The regulations also allow employers to request authorization to pay an authorized rate. *See* 29 C.F.R. §§ 548.3, 548.200, 548.400-.405.

I. Regulations 29 C.F.R. part 551, Local Delivery Drivers and Helpers, requires an employer seeking DOL approval to exempt from overtime pay a local delivery driver or helper who is compensated for such employment on the basis of trip rates, or other delivery payment plan to submit a petition. 29 C.F.R. § 551.3.

i. Section 551.4 provides that the petition may present the required information in any form convenient to the petitioner; no particular form is prescribed for the petition. The petition must also include, by attachment, a copy of any collective bargaining agreement or other document governing the method of payment for the work of employees covered by the wage payment plan with respect to which a finding is requested.

ii. Section 551.5 requires that a petition to pay driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan to provide a full statement of the facts relied upon by the petitioner to establish that the wage payment plan submitted for consideration: (1) applies to employees employed (i) as drivers or drivers' helpers, or both, (ii) in "making local deliveries" and (2) determines, "on the basis of trip rates or other delivery payment plan," the compensation which such employees receive for such employment; a complete description of the wage payment plan and full information concerning its application showing, among other things: (1) the method of compensation which it provides and the types of payments made to employees covered by the plan, together with such information as may be necessary to show how these payments are computed and how and to what extent they are actually used in determining the total compensation received by employees covered by the plan, (2) a full description of all duties performed by the employees compensated under the plan, including information as to the types of goods delivered, their points of origin and destination and the purposes for and geographical area within which they are transported by the employees, the relationship of the employer to the consignor and consignee, and the numbers, (minimum, maximum, and average or typical) of round trips made by such employees in transporting such goods during the workday and of deliveries made during each such trip, and (3) other relevant information concerning the employees compensated under the plan including the total number of such employees employed full-time as drivers or drivers' helpers making local deliveries under the provisions of the plan during the most recent representative annual period as defined in §551.8(g)(1), the weekly hours worked and the average workweek of such employees during such period and, if there are any significant variations in the number of such employees so employed in the particular workweeks within the period, a full statement of the facts concerning such variations, information as to any workweeks in which any employees compensated under the plan devote less than eighty percent of their work time to duties as drivers or drivers' helpers making local deliveries; and a statement of the facts and reasons based on the history and application of the plan which are relied upon to support a finding that the plan has the general purpose and effect of

reducing the hours worked by drivers or drivers' helpers covered by its provisions to, or below, the statutory maximum workweek applicable to them under the Act. Section 551.9 incorporates the § 516.15 requirements as the records employers must keep when claiming the 29 U.S.C. § 13(b)(11) overtime pay exemption applicable to local delivery drivers and helpers. *See* Item 1 B x of this supporting statement.

J. In 29 C.F.R. part 552, Application of the FLSA to Domestic Service, § 552.110 lists the records employers must keep for domestic service employees. This regulation also specifies the recordkeeping requirements for domestic employees who reside on the premises. Section 552.110 incorporates the part 516 requirements by reference.

K. In 29 C.F.R. part 553, Application of the FLSA to State and Local Government Agencies, § 553.50 contains the records State and local governments must keep when using 29 U.S.C. § 207(o) to provide compensatory time and time-off in lieu of a cash overtime payment. Section 553.50 incorporates the § 516.2 provisions by reference, and employers maintain the number of compensatory time hours earned and used each pay period, any cash payments for earned compensatory time, and the agreement or understanding (or a record of its existence) upon which the employer claims the exemption. Section 553.51 contains the records public agencies must maintain when claiming the 29 U.S.C. § 207(k) partial overtime exemption applicable to law enforcement and fire protection employees. Section 553.51 incorporates the § 553.50 requirements by reference, where they apply, and requires the employer to identify the 7 to 28 day long work periods used to claim the exemption.

L. Subpart A of Regulations 29 C.F.R. part 570, Child Labor Regulations, Orders and Statements of Interpretation sets forth the employment minimum age standards for minors. *See* 29 C.F.R. §§ 570.1-.2. Regulation 570.2(b) contains the requirement that an employer obtain and maintain written parental consent to employ a minor age 12 or 13 years old in agriculture to perform non-hazardous work outside of school hours. The section also allows a minor under age 12 years of age to be employed with the consent of a parent or person standing in place of a parent on a farm where all employees are exempt from minimum wage provisions by section 13(a)(6)(A) of the FLSA.

Subpart C of Regulations 29 C.F.R. part 570, Child Labor Regulations, Orders and Statements of Interpretation, sets forth the employment standards for minors between 14 and 16 years of age (Child Labor (CL) Reg. 3). *See* 29 C.F.R. §§ 570.31-.37. Regulations 29 C.F.R. § 570.35a contains the requirements and criteria for the use of 14- and 15- year olds and the occupations permitted for them, and the conditions of employment that allow for the employment of 14- and 15- year olds, pursuant to a school-supervised and school-administered Work Experience and Career Exploration Program (WECEP) under conditions CL Reg. 3 otherwise prohibits. *See* 29 C.F.R. § 570.35a(b)-(d).

<u>Reporting Requirements and Third Party Disclosures</u>

i. WECEP Application: In order to utilize the CL Reg. 3 WECEP provisions, regulations 29 C.F.R. § 570.35a(b)(2) requires a state educational agency to file an application for approval of a state WECEP program as one not interfering with schooling or with the health and well-being of the minors involved.

ii. Written Training Agreement: Regulations 29 C.F.R. § 570.35a(b)(3)(vi) requires the preparation of a written training agreement for each student participating in a WECEP and that such agreement be signed by the teacher-coordinator, employer, and student. Moreover, the student's parent or guardian must also sign or otherwise consent to the agreement in order for it to be valid. *Id.*

iii. Recordkeeping Requirements: Regulations 29 C.F.R. § 570.35a(b)(4)(ii) requires state educational agencies to keep a record of the names and addresses of each school enrolling WECEP students and the number of enrollees in each unit. The state or local educational agency office must also keep a copy of the written training agreement for each student participating in the WECEP. *Id.* The records and copies must be maintained for three years from the date of each student's enrollment in the program. *Id*

M. Regulations 29 C.F.R. § 570.50(c) contains a unique requirement that both the school and the employer of a student-learners in certain cooperative vocational training programs that involve hazardous occupations keep on file copies of a written agreement needed to claim a regulatory exception to the general prohibition on minors performing hazardous work. The school coordinator or principal and the employer of the student learner must sign the agreement, and it must provide that (1) the hazardous work shall be incidental to the training, (2) the work shall be intermittent and for short periods of time under the direction of a qualified and experienced person, (3) safety instructions shall be given by the school and correlated by the employer, and (4) a schedule of organized and progressive work shall be prepared. Section 570.72 identifies the records employers must keep when claiming a regulatory exemption to the general prohibition on minors under age 16 performing hazardous agricultural occupations. This collection provides a form, the WH-5 Form, which employers may use to document the tractor and farm machinery training requirements found in 29 C.F.R. § 570.72(b). This section requires that an employer has proof of training on file with the child's records kept pursuant to part 516 a copy of a certificate acceptable by the Wage and Hour Division, signed by the leader who conducted the training program. The form was developed in response to requests received from 4-H representatives that the Department issue a form for use. The exemption applies to such minors when enrolled in certain training programs in the same way § 570.50(c) applies in non-agricultural occupations.

N. In 29 C.F.R. part 794, Partial Overtime Exemption for Employees of Wholesale or Bulk Petroleum Distributors Under Section 7(b)(3) of the FLSA, § 794.144 incorporates the §§ 516.2, -.22 information collection requirements by reference.

O. FLSA section 3(l), 29 U.S.C. § 203(l), provides, in part, that an employer may protect against unwitting employment of "oppressive child labor," as defined in section 3(l), by having on file an unexpired certificate issued pursuant to DOL regulations certifying that the named person meets the FLSA minimum age requirements for employment. *See* 29 U.S.C. § 212(c)-(d); 29 C.F.R. § 570.5(a).

Regulations, 29 C.F.R. part 570, Subpart B, set forth the requirements for obtaining certificates of age from the DOL. *See* 29 C.F.R. §§ 570.5-.12, .25. The regulations provide that a State-issued age, employment, or working certificate substantially meeting the Federal regulatory requirements for certificates of age is an acceptable alternative to obtaining a Federal Certificate of Age. *See* 29 C.F.R. §§ 570.5(b)(2), 570.9(a). Since most states issue age certificates, they are widely used as proof of age for FLSA youth employment purposes. *See* 29 C.F.R. § 570.9(a). Form WH-14, Application for Federal Certificate of Age, is the application form that the youth and prospective employer complete to obtain a Federal Certificate of Age when the state does not issue certificates or the state certificates do not meet the Federal regulatory requirements. The employer keeps the state certificate or Federal Certificate of Age on file for the duration of the youth's employment. *See* 29 C.F.R. §§ 570.5(b), 570.6(b).

P. FLSA section 13(c)(4), 29 U.S.C. § 213(c)(4), authorizes the Secretary of Labor to grant a waiver of the child labor provisions of the FLSA for the agricultural employment of 10 and 11 year old minors in the hand harvesting of short season crops if specific requirements and conditions set forth in this section are met.

Regulations 29 C.F.R. §§ 575.3, 575.4 outline the application process and identify what the contents must include. Employers granted waivers under section 13(c)(4) of the FLSA are required (1) to obtain and keep on file a record of a signed statement of the parent or person standing in the place of the parent for each 10- and 11- year old minor employed consenting to the employment of such minor under the waiver [29 C.F.R. § 575.8(a)]; (2) to maintain and preserve a record of the name and address of the school in which the minor employed under the waiver is enrolled [29 C.F.R. §575.8(i)]; and (3) to post a copy of the waiver at the job site during the period of the waiver [29 C.F.R. §575.8(h)].

2. Use

The WHD uses this information to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document FLSA compliance, including showing qualification for various FLSA exemptions.

Additional Uses

WECEP application (See Item 1-L*):* A state educational representative files a letter of application requesting the Administrator of the WHD, to approve a WECEP that permits the employment of 14- and 15-year olds under conditions that CL Reg. 3 would otherwise prohibit. *See* 29 C.F.R. § 570.35a(b)(2). The WHD evaluates the application to determine if the program meets the criteria specified in the regulations. *See* 29 C.F.R. § 570.35(b)(3). Without this information, the Administrator would have no means for determining whether the proposed program meets the regulatory requirements.

WECEP written training agreement: The state educational agency or the local educational agency maintains a written training agreement for each student that the teacher-coordinator, employer, and student have signed. *See* 29 C.F.R. § 570.35a(b)(3)(vi). The agreement must also be signed or otherwise consented to by the student's parents or guardians. *Id.* The written training agreement documents the structured training that the WECEP provides for the student.

WECEP list of participating schools and numbers of enrollees: The WHD reviews the required records to determine compliance with the youth employment provisions of the FLSA and its regulations. WHD investigators specifically review this information to determine a minor's enrollment in a WECEP program.

Application for Federal Certificate of age (see Item 1-O*):* Information provided on Form WH-14, along with additional evidence of age, allows the WHD to determine whether certain FLSA minimum age requirements for employment have been met, thus allowing for the issuance of a Federal Certificate of Age to protect an employer applicant from unwitting employment of "oppressive child labor." *See* 29 C.F.R. §§ 570.5-.8. When the WHD issues a certificate, the agency forwards it to the youth or his or her employer and returns the evidence of age. *See* 29 C.F.R. § 570.6(b). Without the additional evidence provided with the application, the WHD would not have sufficient proof of age necessary to issue a certificate. Moreover, failure to require the employer to maintain the age certificate would defeat the intended purpose, to protect the employer in situations where compliance with the child labor regulations is questioned.

Application for a waiver of the child labor provisions for short season hand harvest crops: The application for a waiver of the child labor provisions for short season hand harvest crops under FLSA section 13(c)(4) and required supporting data are used by DOL to determine whether the statutory requirements and conditions for granting an exemption, which would then permit the applicants to employ 10- and 11-year olds to hand harvest short season crops, have been met. The records required to be maintained by employers who have been granted waivers are used by DOL to determine whether the employer has complied with the terms and conditions of the waiver. Without the application for waiver and supporting data, DOL would not have the statutory authority to grant a waiver and failure to require employer maintenance of these records would make it extremely difficult for DOL to determine employer compliance with the waiver.

3. Technology

Consistent with Government Paperwork Elimination Act (GPEA) requirements, the WHD has considered electronic filing options for those regulations providing for filing petitions to appeal various regulations mentioned in this information collection request. The DOL has not found it practical to create an on-line system. The agency has determined the cost of developing and maintaining an on-line system clearly would exceed its value for these rarely used exceptions. The agency would accept appeals filed by fax, provided they contain all required information. With respect to the recordkeeping aspect of this collection, § 516.1 and § 570.2 makes clear that the regulations prescribe no particular order or form of records and employers may preserve records in such forms as microfilm or automated word or data processing memory is acceptable, provided the adequate facilities are available for inspection and transcription of the records.

Form WH-14 (Application for a Federal Certificate of Age) is not available electronically, in order to ensure that downloaded versions of documents are not used for fraudulent purposes, such as identity theft or circumventing FLSA youth employment requirements. In addition, the maintenance of an electronic option to obtain the form is not justified for this information collection that receives approximately 10 responses per year.

With regard to short season hand-harvest crops, electronic application submissions are acceptable, but an on-line filing option is not practicable.

With respect to the WH-5 form submitted for approval. The Department will provide the form electronically on its website in a fillable format, however, since the form will be kept with the particular employer and only submitted to the Department upon request, no electronic filing option will be offered.

4. Duplication

This information collection duplicates no DOL requirements, except as explained in Item 1 of this supporting statement. Typically, any repeated requirements help employers to understand the requirements because each regulation states all of its requirements together and this reduces the need for respondents to crosscheck multiple regulations. Compliance with one regulation automatically satisfies the other regulation containing the identical requirement and there is no duplicate burden. The Internal Revenue Service (IRS) also requires certain similar information (*e.g.*, employee names and addresses). The DOL regulations make clear the information employers must (1) maintain to demonstrate compliance with applicable labor standards and (2) provide to WHD representatives during a compliance action. There is no duplicate burden, since compliance with any similar IRS requirement also satisfies the DOL requirements. Similarly, the DOL will accept a state certificate meeting the Federal regulatory requirements in lieu of a Federal Certificate of Age.

Information requested on the applications covered by this information collection is not available from any other source.

5. Minimizing Small Entity Burden

Although this information collection does involve small businesses, including small State and Local government agencies, this information collection does not have a significant economic impact on a substantial number of those small entities. The DOL, nevertheless, minimizes respondent burden by requiring no order or specific form of records in responding to this information collection. Moreover, employers would normally maintain the records identified in this information collection under usual or customary business practices.

Small businesses benefit from the use of Form WH-14, because the form helps them to avoid potential fines and civil suits by protecting employers from possible unintentional violations of child labor regulations. Similarly, businesses benefit from the ability to use minors to harvest short season crops.

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

The DOL has a statutory obligation to determine and ensure that covered employers employees comply with FLSA requirements. The recordkeeping requirements are an essential tool in determining such compliance. As the FLSA generally applies its provisions on a workweek basis, less frequent collection of information would prevent the DOL from monitoring compliance with the provisions of the Act. The DOL regulations provide exceptions where the workweek does not apply. Employers file applications covered by this collection when seeking particular exemptions from specific FLSA overtime and youth employment provisions, and less frequent collection is not feasible. The DOL must retain these information collections, even those with no current respondents (*e.g.* certain sub-minimum wage programs), because the FLSA provides various exemptions for employers who must have a means to apply for the exemption.

The DOL requires that employers obtain and maintain parental consent to employ minors under age 12 years in non-hazardous occupations in agriculture. *See* 29 C.F.R. § 570.2(b).

The DOL issues Certificates of Age upon request. An employer keeps a certificate on file for the duration of a youth's employment. At the termination of a youth's employment, the employer gives the youth his or her own age certificate for submission to a future employer. *See* 20 C.F.R. § 570.6(b). The form is primarily for the benefit of businesses to protect themselves from unintentional child labor violations. Less frequent application for certificates is not feasible.

7. Special Circumstances

Except for the requirement to maintain most records on a weekly (workweek) basis to ensure compliance with FLSA monetary provisions, there are no special circumstances associated with this information collection.

8. Public Comments

The DOL published notice in the *Federal Register* Notice to invite public comments about this information collection as part of the NPRM (July 6, 2015, 80 FR 38516), seeking comment on the proposal and impacts on the paperwork burdens. The Department received 132 comments that addressed either the Paperwork Reduction Act specifically, or more generally, recordkeeping.

Public Comments: In addition to comments to the substantive recordkeeping provisions, the Department sought public comments regarding the burdens imposed by information collections contained in the proposed rule. A number of commenters expressed concern about potential changes to the duties tests and expressed their view that any changes to the duties tests would be a violation of the Paperwork Reduction Act. In their view, because the Department did not provide specific proposed changes to the duties tests, the Department could not include an explanation of modifications made to the duties tests regulations and identify accompanying public burdens for commenters to review. For example, the Society for Human Resource Management (comment number 5307) indicated that, "[i]f DOL were to suddenly impose a percentage limitation on the amount of time spent performing specific tasks, it could dramatically increase the size of the workforce that must be reclassified as well as increase costs of recordkeeping." The International Dairy Foods Association (comment 5506) and the Christian Camp and Conference Association (comment 5724), International both expressed their view that inclusion of changes to the duties tests based on the NPRM would violate the Paperwork Reduction Act. For example, the Christian Camp and Conference Association, International (comment 5724) cited to 5 C.F.R. § 1320.11(f), and stated that changes to the duties test based on the NPRM "would violate the Paperwork Reduction Act of 1995, because the Department cannot include an explanation of modifications made to the duties tests regulations in response to comments unless the Department first alerts the public to the nature of the proposed rule changes." Other commenters like World at Work (comment 4962), EEAC (comment 5219), National Council of Chain Restaurants(comment 4364), Recreational Diving Industry, the Diving Equipment and Marketing Association (comment 4285), International Bancshares Corporation (comment 4234), New Jersey Association of Mental Health and Addiction Agencies (comment 4084), American Society of Association Executives (comment 1182), and YMCA USA (comment 4346) among others, all agreed with the premise that a lack of detailed proposals in the NPRM about potential modifications to the duties test would risk violation of the Paperwork Reduction Act.

The Department also received some general comments voicing concern about potential burdens on employers with respect to recordkeeping requirements. For example, American Society of Association Executives indicated that "adopting a specific time percentage for the primary duty test would contribute to an increase in prolonged and expensive litigation and would encourage employers to require their exempt employees

to engage in burdensome administrative recordkeeping simply as a defense against misclassification suits." The Community Bankers Association (comment 2541) agreed.

In addition, the Department received a number of form letters that addressed the recordkeeping requirements. A significant number of those letters expressed their view that because the Department had not proposed any changes to the duties test, the potential burdens could not be addressed in the Paperwork Reduction Act section of the proposed rule. For example, World at Work (comment 4962) indicated that, "inclusion of changes to the duties test based on the Department's proposal would violate the Paperwork Reduction Act of 1995, because the Department cannot include an explanation of modifications made to the duties test regulations in response to comments unless the Department first alerts the public to the nature of the proposed rule changes." The Recreational Diving Industry (comment 4285), the Diving Equipment and Marketing Association opined that, "inclusion of changes to the duties tests based on the NPRM would violate the Paperwork Reduction Act of 1995." Comments from organizations such as YMCA-USA (comment 4346), National Council of Chain Restaurants (comment 4364), New Jersey Association of Mental Health and Addiction Agencies (comment 4084), the National Retail Federation (comment 4002), Island Hospitality Management (comment 3952), the Community Bankers Association, and the American Society of Association Executives (comment 3952) all contained similar concerns.

Some commenters expressed concern about the burden associated with a change in the duties test that might require more extensive tracking of hours. For example, Alternatives (comment 2828) stated that, "it is not uncommon for a supervisor to perform direct care work as a means of training or modeling to a subordinate how to properly perform the work. If this work were to be classified as nonexempt, it could impede a supervisor's ability to effectively manage his or her subordinate, and would also impose an additional record keeping burden." Commenters using this exact same language included: Mathew Morris Companion Housing Programs (comment 5725), IPMG (comment 5558), Exceptional Persons, Inc. (comment 5156), Provider Alliance for Community Services of Texas (comment 5670), Cornerstone Associates (5368), East Ridge Health System (comment 4938), Pathfinder Services (comment 4586), Lifescape, Southern Indiana Resource Solutions, Inc. (comment 3964), ANCOR (comment 2755), and Christian Camp and Conference Association International (comment 5724) among others.

Some commenters specifically articulated concern about implementing a percentage duties test. For example, Lutheran Social Service (comment 5662) stated that, "the SO percent standard used in California is overly prescriptive and does not take into account differences in duties and expectations that exist across sectors and industries." They added that, "[i]n addition to placing extensive, burdensome recordkeeping requirements on the employer, such a test would be unworkable in many workplaces where otherwise exempt employees must also conduct nonexempt activities." The International Franchise Association (comment 5469) echoed that concern stating that, "reactivating the former strict percentage limitations on nonexempt work in the existing 'long' duties tests could impose significant new monitoring requirements (and, indirectly, new recordkeeping

burdens) and require employers to conduct a detailed analysis…". Walmart (comment 5397) expressed a similar concern, stating that, "Walmart would be concerned if such a proposal includes any quantitative or time based assessment of an exempt employee's duties or further, a prohibition on concurrent duties. Such changes would require employers to undertake significant recordkeeping burdens and add to the uncertainty over classifications."

A number of commenters used similar language to express concerns about cost estimates related to recordkeeping. For example, Reid Petroleum (comment 4470) indicated that, "[o]ur members have given us much higher estimates for the cost of understanding the impact of the changes in their specific workplaces, determining new administrative measures to limit overtime penalties while still accomplishing the mission of the business, setting up revised recordkeeping and payroll systems, and paying employees any overtime penalties they are due. If the duties tests are changed on top of this, the cost estimates will be so far wrong as to fail to comply with law." SA Photonics (comment 4427), Surescan Corporation (comment 4702), and others used the same or substantially similar language to express this view.

The Department has carefully considered the comments received in response to the Paperwork Reduction Act and burdens association with the information collections impacted by this rulemaking. Since the Department has decided against enacting any changes to the standard duties test or adding new examples to the current regulatory text at this time, most of the concerns articulated by the commenters are resolved. The Department notes that most of the concerns expressed by commenters regarding paperwork burdens surrounded potential changes to the duties tests. The duties tests are not being altered as part of this Final Rule and therefore these commenters concerns have been addressed. The same is true for those who expressed concern over the potential adoption of a duties percentage test. Since the Department has elected not to pursue a change to the duties tests, such concerns have been addressed.

With respect to the commenters who express concern about the recordkeeping costs, the Department notes that almost all employers currently have both exempt and nonexempt workers currently and therefore systems should already be in place for employers to track hours. The Department makes no new recordkeeping requirements in this Final Rule. The Department adjusts the burden hours upward to reflect the wider pool of workers for whom employers will now need to make and maintain records due to the increase in the salary level. However, commenters did not offer alternatives for estimates or make suggestions regarding methodology for the PRA burdens.

9. Payment or Gifts to Respondents

The DOL makes no payments or gifts to respondents completing these recordkeeping requirements.

10. Assurances of Confidentiality

The DOL makes no assurances of confidentiality to respondents. As a practical matter, the DOL would only disclose information under these requests in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the attendant regulations, 29 C.F.R. part 70, and the Privacy Act, 5 U.S.C. § 552a, with its attendant regulations 29 C.F.R. part 71.

11. Sensitive Questions

The DOL asks no sensitive questions in this information collection.

12. Estimated Annual Respondent Burden Hours

The following table enumerates regulatory sections with an associated recordkeeping burden and distributes the DOL estimates of the total number of employers, employees, and burden hours to each particular recordkeeping section. *See* Item 1 for a detailed discussion of each recordkeeping section, regardless of whether or not a burden exists. The DOL has used data provided by the Bureau of Labor Statistics (BLS), WHD Certificate Processing System, WHD enforcement data, WHD enforcement staff experience, and Department of Agriculture, National Agriculture Statistics Service to develop the following burden estimates.

29 C.F.R §	Respondents	Responses	Burden Hours
505.5[1]	0	0	0
516.2[2]	752,000*	18,048,000	601,600

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

[2] The potential respondent universe includes all employers covered by the FLSA (i.e., employers with workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person),7,520,000 establishments (SeeTable 36 of Final Rule), have employees; however, some of these establishments will not have any employees covered the Act. These private sector employers employ 132,800,000 employees that are subject to the FLSA and the Department's regulations. (See Figure 2 of economic analysis). The FLSA covers employees working for covered States, political subdivisions of a State or interstate governmental agencies. These are included in these figures do not include Federal employees for whom the Office of Personnel Management has FLSA jurisdiction.

Of the 132,754,214 workers in the analysis:

- 17,816,716 are employed by state and local governments
- 730,506 are employed by the federal government (these are the subset of federal workers who are covered by the FLSA)
- The rest are employed in the private sector

As indicated in Item 4, employers also need the basic FLSA recordkeeping requirements listed in § 516.2 to meet IRS requirements; however, to account for those rare instances in which some employers might not otherwise keep these records on each and every information item required, the DOL estimates that § 516.2 imposes a unique burden on 10 percent of FLSA covered employers, and each of these employers has one employee. The DOL further estimates each of these employers maintains these records on a semi-monthly basis and each response requires two minutes.

Respondents: 7,520,000 employers x 0.1 = 752,000 respondents.

Responses: 752,000 respondents x 24 annual responses = 18,048,000 total responses.

516.2[3]	2,506,666	2,506,666	2,506,666
29 C.F.R §	**Respondents**	**Responses**	**Burden Hours**
516.3[4]	0	0	0
516.5 & 516.6[5]	0	0	0
516.9[6]	1	1	1
29 C.F.R §	**Respondents**	**Responses**	**Burden Hours**
516.11; 516.12; 516.13;	0	0	0
516.14[7]	0	0	0
516.15, 551.3-.5[8]	60	4080	68

Burden Hours 18,048,000 total responses x 2 min./ 60 min. per hour = 601,600 hours.
*Note that the Respondents in this item are captured in the number below so they will not be duplicate counted in totals. Responses and burden hours will be captured, however since these are recordkeeping.

[3] Regulatory Familiarization
Additionally, the Final Rule creates a burden for employers as part of regulatory familiarization.
To estimate the total regulatory familiarization costs, three pieces of information were estimated: (1) a wage level for the employees reviewing the rule; (2) the number of hours each employees spends reviewing the rule; and (3) the number of establishments employing workers. (See economic analysis Final Rule). The Department's analysis assumes that mid-level human resource workers with a median wage of $24.86 per hour will review the Final Rule. Assuming benefits are paid at a rate of 46 percent of the base wage and one hour of time is required for regulatory familiarization, the average cost per establishment is $36.22. The number of establishments with paid employees was 7.52 million.
Regulatory familiarization costs in Year 1 were estimated to be $272.54 million ($36.22 per establishment hour x 1 hour x 7.52 million establishments). Regulatory familiarization costs in future years is discussed in Section VII.D.x of the Final Rule. In future years, new firms will be formed and may incur regulatory familiarization costs. However, the Department believes the incremental cost of this regulation will be zero since new firms will only need to familiarize themselves with the updated law, instead of the old law.
Wage Rate
The Department estimated in the NPRM that one hour of regulatory familiarization time costs $34.19 based on the wage for a mid-level human resources worker adjusted to include benefits. We follow the same approach in this RIA; however, due to growth in wages, the wage rate used in the Final Rule is $36.22. This wage estimate is an average across all firms.
Time Requirement
In the NPRM, the Department estimated each establishment will, on average, spend one hour on regulatory familiarization costs. , which involves time spent to learn about the changes in the regulation. Firms with more affected EAP workers will likely spend more time reviewing the regulation than firms with fewer or no affected EAP workers. No data were identified from which to estimate the amount of time required to review the regulation, and the Department requested that commenters provide data if possible. The Department did not receive any reliable data from commenters, although some commenters suggested different amounts of time based on their personal judgment or surveys they conducted. (See review of comments, economic analysis Final Rule).
The Department believes that one hour is sufficient time to read about and understand, for example, the change from $455 to $913 as the standard salary level and we note that the regulatory text changes comprise only a few pages.
Recurrence
The Department agrees there will be some negligible regulatory familiarization costs in years when the salary level is updated (i.e., 2020, 2023, and 2026). However, this is not addressed here because the PRA is a three year clearance cycle.
Regulatory familiarization costs only occur in years when the salary levels are automatically updated. In addition to Year 1, some regulatory familiarization costs are expected to occur in Year 4 (FY2020), Year 7 (FY2023), and Year 10 (FY2026). The burdens for 2020 and 2023 are not included here as the PRA is a three year clearance cycle.
Regulatory Familiarization burden hours and burden cost
7,520,000 x 1 hour = 7,520,000 burden hours

516.16; 516.17; 516.18;	0	0	0
516.20; 516.21; 516.22;	0	0	0
516.23; 516.24[9]	0	0	0
516.25 & 516.26[10]	2000	24,000	2000
516.27[11]	0	0	0
516.28[12]	22,700	544,800	1513
516.29[13]	0	0	0
516.31[14]	NA	NA	NA
516.33[15]	86,631	107,396	3580
29 C.F.R §	**Respondents**	**Responses**	**Burden Hours**
516.34[16]	15,000	300,000	5,000

7,520,000 hours x $36.22 per hour = $272,374,400
Note that while the RIA of the Final Rule indicates that all the reg familiarization costs will be absorbed in Year 1, DOL divides over the three year clearance cycle for PRA so the numbers are divided by 3.

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

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

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

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

[8] Approximately 60 employers employ 1020 individuals under trip rate plans, and the unique recordkeeping burden is 1 minute per employee each quarter (to keep data as to the basis on which wages are paid, retention of the plan and computation each quarter of average weekly hours of all full-time employees employed under a trip rate plan). (Responses: 1020 employees X 4 responses = 4080 responses. Burden Hours: 4080 responses X 1 min./60 min. per hour = 68 hours. 1 minute response time based on 58 seconds average recordkeeping, one 2-hour application divided among all respondents (1.75 seconds), and a third party disclosure (0.25 seconds).

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

[10] Section 516.2 subsumes many of the records identified in §§ 516.25-.26, -.200, and -.306. The DOL estimates 2000 employers use the 29 U.S.C. § 207(g)(1)-(3) overtime exceptions. The DOL further estimates each of these employers pays an average of about 12 individual employees or groups of identically paid employees. The unique burden is about 5 minutes each year per employee or employee group to keep records regarding the method of computation of the rate. Responses: 2000 employers X 12 employees = 24,000 responses. Burden Hours 24,000 responses X 5 min./60 min. per hour = 2000 hours.

[11] Section 516.2 and IRS requirements subsume all required items.

[12] The DOL estimates the FLSA covers approximately 227,000 employers of tipped employees paid a cash wage of less than $7.25 per hour; however, as previously noted, the DOL accepts Form IRS-4070 as complying with the § 516.28 requirements. To account for those rare instances in which some employers might not otherwise keep these records in tipped employees, the DOL has estimated the following burdens by using the same methodology as discussed in Footnote 2, with the exception of the additional needed to record tip information (10 sec.). (Respondents: 227,000 employers of tipped employees x 0.1 unique DOL burden = 22,700 respondents. Responses 22,700 x 24 annual = 544,800 total responses. Burden Hours 45,400 responses x 10 seconds /60 sec. per min./ 60 min. per hour = 1513 hours.)

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

[14] The DOL clears this information collection under OMB Control No. 1235-0001.

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

519.7 & 519.17[17]	256	4584	382
519.9 & 519.19[18]	0	0	0
520.204[19]	0	0	0
520.412[20]	0	0	0
520.508[21]	480	480	4
525.12 & 525.16[22]	2,100	336,000	168,000
525.18 & 525.22[23]	0	0	0
530.8 &530.9[24]	0	0	0
29 C.F.R §	**Respondents**	**Responses**	**Burden Hours**
530.11[25]	0	0	0

The 2007 Census of Agriculture data suggest 41,306 farms have payroll or farm labor contractor expenses between $50,000 and $99,999. This is the employer group most likely to maintain these records, since the remaining agricultural employers would clearly know by past employment experience whether they met the man-day count. The BLS reports median hourly earnings of $9.12 for all workers in the crop farm worker occupations. $9.12 x 8 hours x 500 man-days x 4 quarters = $145,920. As most agricultural work is seasonal, the DOL took the next smaller census category ($50,000-$99,000). Each respondent will spend approximately 1 minute filing 1.3 responses, as explained below. (Responses: 41,306 respondents X 1.3 responses = 53,698 total responses. Hours burden: 53,698 total responses X 1 min./60 min = 895 hours.

The payroll and farm labor contractor expenses for this group of employers amount to $2,488,015,000 (9.4 percent of the total $26,391,827,000 spent by all farms for labor), according to the Census. Derived from 2007 USDA Census of Agriculture farm labor and contract labor cost data available from http://quickstats.nass.usda.gov/results/8C7E2210-8D50-3C99-B1F9-8EDF14C64042. The DOL has applied the percentage of agricultural businesses estimated to be subject to the recordkeeping requirement (9.4 percent) to the number of farm workers to estimate 38,174 employees are subject to be reporting requirement. 406,110 employees x 9.4 percent = 38,174 employees. The mean average number of agricultural employers per farm worker is approximately 1.5, which further supports the 53,698 responses estimate. *See Findings from the National Agricultural Workers Survey (NAWS) 2001 – 2002, A Demographic and Employment Profile of United States Farm Workers*, DOL, Assistant Secretary for Policy, March 2005, http://www.doleta.gov/agworker/report9/chapter4.cfm#employers. Note: Employee responses shown in Regulatory Information Service and Office of Information and Regulatory Affairs Consolidated Information System (ROCIS) as 1.183742, in order to equal the employer burden. (Employee Responses: 45,325 respondents x 1.184732 responses = 53,698 total employee responses. 53698 total employee responses X 3 min./60 min. = 2228 hours.) (Total Respondents: 34,273 employers + 29,525 employees = 63,798 total respondents. Total Responses: 44,555 employer responses + 44,555 employee responses = 89,110 total responses. Total Hours Burden: 743 employer hours + 2228 employee hours = 2971 total hours.)

[16] The DOL estimates that maintaining the time and payroll records of each affected employee takes approximately 1 minute per week during a period of ten weeks, for ten minutes per year. The agency also estimates approximately 30,000 employees receive remedial education, for an annual burden of 5000 hours. 10 minutes x 30,000 employee). The DOL also estimates an average of two employees per employer using this partial overtime exemption receive remedial education, for a total number of employers (respondents) of 15,000. 30,000 employees/2 employees per employer.

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

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

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

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

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

547.1 & 549.1[26]	2,710,602	1,924,527	1,069
548.4, 548.200, 548.400-.405[27]	1	1	3
548.306[28]	0	0	0
551.3-.5[29]	0	0	0
552.110[30]	0	0	0
553.50[31]	154,320	22,222,141	185,186
553.51[32]	0	0	0
570.2[33]	201	201	17
29 C.F.R §	**Respondents**	**Responses**	**Burden Hours**

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

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

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

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

[26] The potential respondent universe includes all employers covered by the FLSA (*i.e.*, employers with workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person), which affects approximately 6,160,461 employers. (*See Census, Statistics about Business Size-including Small Business*, Table-3, U.S. Department of Commerce, Bureau of the Census, www.census.gov/epcd/www/smallbus.html). Some 44 percent of establishments offer a defined contribution plan. (*See National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2007*, p.9, BLS, http://www.bls.gov/ncs/ebs/sp/ebsm0006.pdf); therefore, the DOL estimates 2,607,491 employers make disclosures subject to this information collection.

The DOL estimates average establishment size to be 5 employees, and the typical worker remains employed for the same employer for seven years (based on an average turnover rate of 15 percent); thus, the average employer makes about 0.71 disclosures per year. 5/7 = 0.71. *See Census, Statistics about Business Size-including Small Business*, Table-3, U.S. Department of Commerce, Bureau of the Census, www.census.gov/epcd/www/smallbus.html. 1,924,527 annual disclosures. 2,710,602 x 0.71 = 1,924,527.

These regulations would typically not impose any third-party disclosure or recordkeeping burdens on employers beyond what would be common under prudent business practices or required under information collections administered by other agencies. A prudent employer establishing a thrift or savings plan, profit-sharing plan or trust would set forth the plan in writing, describe eligibility requirements, a definite formula for saving, and the amount of the employer's contributions, even if not required to do so by these regulations. The annual burden is estimated to equal two seconds (one second for disclosure and another second for recordkeeping) per new employee, in order to account for situations where the employer would not disclose information subject to this collection as either a routine business practice or in response to an information collection covered under another OMB Control Number. 1,924,527 responses/60 seconds/60 minutes x 2 seconds = 1069 (rounded) total annual recordkeeping and disclosure burden hours.

[27] The DOL has received no applications, but has inserted one application as a placeholder. The DOL estimates an application would take approximately three hours to prepare.

[28] This section creates no additional burden since § 516.25 subsumes the § 548.306 requirements.

[29] The burden estimate is included in the calculations for § 516.15.

[30] This section creates no additional burden since the part 516 burden subsumes the § 552.110 burden requirements, in that employers substitute one record for another.

[31] The DOL estimates two-thirds of State and local government employers are subject to this recordkeeping requirement, each subject employer maintains 6 records per semi-monthly pay period and filing each record takes approximately 0.5 minutes. Respondents: 230,329 total public sector employers x 0.67 = 154,320 respondents. Reponses: 153,000 respondents x 6 responses x 2 pay periods x 12 months = 22,222,341 responses. Hours burden

570.5-.12 & 570.25[34]	10	10	2
570.35a(b)[35]	7	7	14
570.35a(b)(3)(vi)[36]	280	14,000	14,117
570.35a(b)(4)(ii)[37]	14	280	14
570.50[38]	480	480	8
570.72[39]	10,150	20,200	337
575.3, 575.4, 575.8[40]	1	1	4
794.144[41]	0	0	0
TOTALS	**5,511,960**	**46,057,855**	**3,489,585**

22,222,341 total responses X 0.5 min./60 min. per hour = 185,186 total hours.)

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

[33] The regulations require written parental consent for a minor 12-13 years of age. The Department estimates that 201 employees are subject to the written parental consent requirement. This is approximately 1 percent of those workers discussed in #39. 201 x 5 min/60 = 17 hours.

[34] The DOL annually receives approximately 10 Forms WH-14 and estimates it takes respondents approximately 10 minutes to complete each application and one half minute to file it, for an annual burden of two hours, rounded. 10 forms x 10 minutes.

[35] The DOL estimates it takes approximately two hours for a state educational agency to prepare the letter applying for approval of a WECEP, which is valid for two years from the approval date. On average, seven state educational agencies apply per year for an annual burden of 14 hours. (Total 14 WECEPs at any given time.)

[36] The DOL estimates each regulatory-required written training agreement between the teacher-coordinator, employer, and student takes approximately one hour to complete. Departmental experience leads us to believe that on average each participating state has about 20 participating schools (total 280 respondents) that each have about 50 students enrolled in a WECEP program: thus, on average, 1000 students annually participate under each WECEP for an equal number of responses. 1000 written agreements x 1 hour = 1000 hours. 1000 hours per WECEP x 14 WECEPs = 14,000 annual burden hours. The DOL estimates it takes approximately one-half minute to file each WECEP record and written training agreement, for a total annual burden of 117 hours. (1000 written agreements x 14 WECEPs) + 14 WECEP records of schools and number of enrollees = 14,014 documents x .5 minutes = 7007 minutes/60 = 117 hours (Rounded). 14,000 hours for written training agreements + 117 recordkeeping = 14,117 annual reporting burden hours.

[37] The DOL estimates each state educational agency spends an average of one hour per year meeting the requirement to record names and addresses of each school enrolling WECEP students and the number of enrollees in each unit. The total annual burden for the 14 state WECEPs is 14 hours. 14 respondents x 20 responses = 280 total responses.

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

[39] Approximately 10,050 agricultural employers employ 20,100 student learners under conditions the FLSA regulations generally prohibit. The unique recordkeeping burden is one minute per minor per year, for a total annual burden of 335 hours. 20,100 responses x 1 min/ 60 min. per hour = 335. Additionally, the Department estimates that 100 employers will utilize the WH-5 Certificate of Training for youth in agriculture under age 16 and each response will take one minute. 100 responses x 1 minute/60 min. per hour = 2 hours for a total of 337 (335+2).

[40] The DOL estimate it takes an employer or group of employers applying for a waiver 3 hours to assemble information and preparing each application for waiver that will allow 10 and 11 year old minors in the hand harvesting of short season crops, for an annual burden of 3 hours. Although no applications for waiver have been received since 1990, one waiver application is estimated annually because of the existing statutory right of an employer to request such a waiver. Moreover, the additional recordkeeping and posting requirements for employers granted waivers which are over and above those required under Regulations, 29 C.F.R. part 516 (s*ee* Item 1) are estimated to create an additional annual recordkeeping burden of one hour per application per year, bringing the total annual recordkeeping burden to 4 hours

The FLSA covers certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce by any person. The FLSA also applies to employers of individually covered employees who engage in interstate commerce or in the production of goods for interstate commerce, even when the employees work for a non-covered enterprise. Accordingly, the FLSA covers a wide range of different sizes and types of employers, from a small retail store, to a farm, to a large multi-unit manufacturing enterprise with locations in several states. Any of these employers subject to the FLSA is required to keep the records described in this submission. The DOL has used the mid level human resource workers median wage from the Final Rule economic analysis $36.22 (24.86 = 46% benefit cost) to estimate respondent cost of $126,392,768. ($90,791,443 from this rulemaking).

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

The DOL associates no substantive operation or maintenance costs with these information collections.

14. Estimated Annual Federal Costs

The DOL associates no Federal costs with these recordkeeping requirements.

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

The Department adds no new recordkeeping requirements in this Final Rule. However, the Department adjusts the burden hours for recordkeeping as this Final Rule increases the pool of employees for whom employers will need to make and maintain records.

16. Publishing Data From Information Collection

The DOL does not publish the results of these information collections.

17. Display of OMB Approval Expiration

The DOL does not seek an exception to the requirement to display the expiration date for OMB approval of these information collections.

18. Exceptions to Certification Statement

The DOL is not requesting an exception to any of the certification requirements for these information collections. This request complies with 5 C.F.R. § 1320.9.

[41] This section creates no unique burden since § 516.21 subsumes the § 794.144 requirements. Regulations § 516.2, in turn subsumes the § 516.21 burden.

B. Employing Statistical Methods:

Not applicable.