

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 change is to provide an electronic form for the public's use when completing the WH-226 and/or WH-226A forms. An online platform has been created so the WH-226 and WH-226A forms may be submitted electronically. The substance of the proposed electronic forms is substantially the same with minor word changes to accommodate the type of submission (electronic versus paper).

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. DOL is proposing to revise the certificate application forms and instructions pertaining to the employment of workers with disabilities at subminimum wage rates (Forms WH-226 and WH-226A), by creating an electronic platform for these forms specifically. 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

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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 the legal authority to collect this information 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). A revision was submitted to OMB for approval in September 2016. The Office of Management and Budget approved the revised forms in December 2016.

Several important legal changes 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 concluded that Forms WH-226 and WH-226A needed to be updated to account for these significant changes. These changes were reflected in the prior submission to the OMB.

A brief description of each of those collections 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.

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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.

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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).

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.

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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 homeworker 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 homeworker 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 homeworker 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/WH-209

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 currently 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 proposing electronic submission of the information collection as part of this revision and renewal. The Department proposes with this revision to provide an electronic format for the forms WH-226 and WH-226A to eliminate the mailing process and provide better service to the user.

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_homeworker.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

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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 1,000 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.**

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 Department also proposes an online electronic platform for submission of the information.

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 November 9, 2016, the Wage and Hour Division (WHD) published a 60-day notice (81 FR 78861) in the Federal Register, proposing the revision to this ICR which provides an electronic platform for the section 14(c) certificate application forms (WH-226 and WH-226A) and seeking public comment on the proposed electronic form. 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 January 9, 2017, WHD had received no timely comments.

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, generally, 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.

However, some data is public data and posted on the WHD website. For example, the business certificate holder under the 14(c) certificate program is publicly available at this link:

<https://www.dol.gov/whd/specialemployment/BusinessCertList.htm>.

This includes employer name and address and start and end date of the certificate.

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

The Department has uploaded the screen shots for the proposed electronic forms approval that is being requested.

WH-226

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. Note that the difference in the initial applicant time to complete the form and the renewal applicant time to complete the form is that the initial applicant should have zero subminimum wage employees until after a certificate is received. The Department notes that use of the electronic form for first-time users will be substantially the same

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time burden. This is due to the fact that the form is new and the user will need to become familiar with the electronic form and all the data will still need to be entered by the user the first time. However, the Department continues to work to implement Phase II of the electronic platform, which provides an option to save the data and so data for certain workers that carry over from one year to the next will already be available to the user who saves the data. As only Phase I of the project is complete, the Department's burden estimates will not take into account Phase II features which may reduce respondent burden. However, the Department intends to resubmit the collection at a future date upon completion of Phase II to demonstrate any burden reduction. The Department estimates that in the first clearance period, one third of users will submit the data electronically.

As a result, the Department submits the following calculations annually:

The annual average over the three year clearance cycle for WH-226 is:

Initial forms: 80 (paper) + 40 (electronic) = 120 forms x 50 minutes per response /60 minutes per hour = **100 hours**.

Renewal Forms: 920 (paper) + 460 (electronic) x 75 minutes per response /60 min. per hour = **1,725 hours**.

Total for WH-226 annually is 100 hours initial + 1,725 hours renewal = 1,825 hours.

WH-226A

DOL estimates the 1,500 respondents who fill out Form WH-226 will complete 6,000 copies of Form WH-226A annually and respondents will take an average of 2 hours to complete the form. The Department noted that the GAO report published in 2001 indicated that businesses on average will employ just three of these workers. For such employers, it will take much less than 2 hours 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 2 hours to complete the WH-226A.

As with the WH-226 form, the Department estimates no reduction in burden until completion of Phase II for the WH-226A electronic form and estimates one third of respondents will use the electronic form during this clearance cycle. This results in 1,000 respondents paper + 500 respondents (electronic) = 1,500 respondents.

Each of the 1,500 respondents will submit 4 forms annually (paper and electronic) and it will take them 2 hours to complete the forms for a total of 12,000 annual burden hours.

Paper submission: 1,000 respondents x 4 forms (4,000) x 2 hours per form = 8,000 hours

Electronic submission: 500 respondents x 4 forms (2,000) x 2 hours per form = 4,000 hours

Total Annual Burden Hours for WH-226A = 12,000 hours

Total Annual Burden Hours: $(1,825 + 12,000) = 13,825$

Total Annual Burden hours for FORM 226 and FORM 226A = 13,825

B. Form WH-2

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.)

Total Annual Burden for FORM WH-2: 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 = 2.5 hours (3 rounded)).

Total Annual Burden for FORM WH-46: 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 150 hours.** (50 employers x 3 measurements x 1 hour).

In addition the filing of each piece-rate work measurement will take approximately 1 minute (50 piece-rate work measurements x 1 minute). **Total annual burden is 1hour.**

Total Annual Burden for PIECE RATE MEASUREMENT: 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*

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Workers in the United States: 2010, Table 6, p. 9. U.S. Census Bureau.
<http://www.census.gov/prod/2012pubs/p70-132.pdf>. (This will be the most current data until the 2020 census.)

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).

- a. The DOL estimates an average burden of 30 minutes per Homewoker 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**.
- b. Moreover, the DOL estimates it takes an average of 30 seconds to file each completed Homewoker 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 = **11,140 hours**).

Total = 668,400 hours + 11,140 hours = 679,540 hours.

Total Annual Burden for FORM WH-75: 679,540 HOURS

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

The DOL estimates a total of 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 initial 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.

Renewal applications: 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.

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

Total Annual Burden for WH -200 = 87 hours

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.

Initial applications: 7 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 = **1 hour** (rounded).

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 (1,200 minutes /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 = (7,100 minutes/60 minutes per hour) = **12 hours** (rounded).

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

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

Total Annual Burden for Form WH-202 = 34 hours.

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

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. (316 applications x 30 minutes/60 min. per hour).

Total Annual Burden for FORM 205: 158 hours.

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.

Total Annual Burden for FORM 209: Currently Zero

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.

Total Annual Burden for Apprentices: Currently Zero

Total Burden for FORMS WH-205, WH-209, AND APPRENTICES: 158 HOURS.

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Annualized Estimate Respondent Hour and Cost Burden

*See The Employment Situation, December 2017, Table B-8. https://www.bls.gov/news.release/archives/empsit_01052018.pdf

Activity/Form	No. of Respondents	No. of Responses per Respondent	Total Number of Responses	Avg, Burden per Response (in Hrs.)	Total Burden Hours	Avg, Hourly Wage Rate*	Total Burden Costs
WH-226 Initial	120	1	120	50/60	100	\$22.30	\$2,230
WH-226 Renewal	1,380	1	1,380	75/60	1,725	\$22.30	\$38,468
WH-226A	1,500	4	6,000	2	12,000	\$22.30	\$267,600
WH-226/226A Total	1,500	-	7,500	-	13,825	--	\$308,298
WH-2	1	1	1	1	1	\$22.30	\$22
WH-46	5	1	5	30/60	3	\$22.30	\$67
Piece Rate (Reporting)	50	3	150	1	150	\$22.30	\$3,345
Piece Rate (Filing)	50	1	50	1/60	1	\$22.30	\$22
Piece Rate Total	50	4	200	--	151	--	\$3,367
WH-75	334,200	4	1,336,800	30.5/60	679,540	\$22.30	\$15,153,742
WH-200	387	1	387	13.5/60	87	\$22.30	\$1,940
WH-201	17	1	17	28/60	8	\$22.30	\$178
WH-202	131	1	131	15.5/60	34	\$22.30	\$758
WH-200/201/202 Total	535	-	535	--	129	--	\$2,876
WH-205/209/ Apprentices	316	1	316	30/60	158	\$22.30	\$3,523
Unduplicated Totals	336,607	—	1,345,357	—	693,807	—	\$15,471,895

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 December 2017 average hourly rate for production or nonsupervisory workers on nonfarm payrolls of \$22.30 to determine respondent costs. (See The Employment Situation, December 2017, Table B-8,. https://www.bls.gov/news.release/archives/empsit_01052018.pdf.) This pdf is uploaded as a supplementary document for your convenience into the ROCIS system.

693,807 x \$22.30 = \$15,471,896. (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

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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: \$2,030.00 (1,000 mailings x (\$2.00 postage + \$0.03 per envelope) = \$2,030.00.)

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: \$2,482. (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 (\$50.81 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 \$127(rounded) (5 applications x ½ hour x \$50.81 per hr. = \$127.05).

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

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Homeworker Handbooks. Previous experience indicates that annually each homeworker 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: \$1642.

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 \$35.85 per hour in Chicago, Illinois. The 120 initial forms are processed by a GS-11/4 employee who earns \$35.85 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 1,000 forms x .03 per page and six pages = \$180

 WH-226A 1,000 forms x .03 per page and three pages = \$90

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:

 WH-226 1,500 forms x 30 minutes (45,000 min./60 min. per hour = 750 hours
 x \$35.85 = \$26,888 (rounded)

 WH-226A 6,000 forms x 30 minutes per form ((180,000/60 min per hour) =
 3,000 hours (rounded) x \$35.85 = \$107,550

TOTAL FEDERAL COST FOR FORMS WH-226 AND WH-226A: \$180 + 90 + 780 + 26,888 + 107,550 = \$135,488

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.

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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 \$29.47 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 \$29.47 = \$262.77

Filing: 1 minute x 535 forms x \$29.47 = \$262.77

Form Processing:

10 minutes x 117 initial applications x 29.47 = \$574.66

5 minutes x 418 renewal applications x \$29.47 = \$1,026.54

TOTAL ANNUAL FEDERAL COST (WH-200, 201, 202) = \$ 32.10 + 278.20 + 262.77 + 262.77 + 574.66 + 1,026.54 = \$2437.04

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 (\$41.06 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 \$42.73 (GS 12/Step 4) = \$2,265 (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 \$1,642

WH-226 and WH-226A \$135,488

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WH-200/201/202	\$2,437
WH-205	\$2,265
WH-209	\$0
WH-2	\$0
Total	\$141,832

15. Explain the reasons for any program changes or adjustments.

The number of piece rate responses was revised to account for the filing as well as the recordkeeping requirement. The burden hours did not change. The Department proposes to add an electronic form WH-226 and WH-226A with this revision. The Department estimates a reduction in cost burden for employers who will no longer mail their WH-226 and WH-226A forms and instead use the electronic form.

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/workerdisabilities/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.”

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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.