

**SUPPORTING STATEMENT FOR  
SPECIAL EMPLOYMENT UNDER THE FAIR LABOR STANDARDS ACT**

**OMB CONTROL NO. 1235-0001**

The U.S. Department of Labor (Department) submits this information collection request (ICR) as a revision.

This collection was last submitted to OMB on June 12, 2024 as an extension with minor revisions. OMB approved the ICR on July 15, 2024. The Department also submitted a nonsubstantive change request to OMB to reflect changes to its section 14(c) online application platform. The Department is submitting this ICR to alert the public of the eventual downward revisions to burden estimates to accompany a Notice of Proposed Rulemaking (NPRM) (and should the rule proceed to final) and to revise burden estimates with current data. On December 4, 2024, consistent with its statutory authority to administer and enforce section 14(c) of the FLSA, the Department published a NPRM to revise the part 525 regulations (89 FR 96466).

**Part A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

This information collection pertains to the employment of workers under 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 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.

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 (Secretary) 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 such as community rehabilitation programs, in schools, and in hospitals or institutions at subminimum wages that are commensurate with those paid to workers without disabilities. The commensurate rate is based on 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. School officials also use these forms to request authorization for students with disabilities to participate in school work experience programs 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 CFR 525.7, 525.8, 525.9, 525.11, 525.12, and 525.13. Most certificates are valid for two years. The Department has the legal authority to collect this information pursuant to its broad statutory and regulatory authority to enforce section 14(c) by administering the issuance of certificates. *See* 29 U.S.C. 214(c); 29 CFR part 525. The Department's implementing regulations specify that employers "shall provide answers to all of the applicable questions contained on the application form." 29 CFR 525.7(b).

The Department has carefully reviewed current Forms WH-226 and WH-226A, as well as a related webpage, located at <https://www.dol.gov/agencies/whd/forms/wh226>, and determined that they require nonsubstantive edits. For detailed descriptions of the Department's proposed edits, see the supplementary documents associated with this supporting statement. The proposed edits to the WH-226 and WH-226A track the paper forms, however, conforming edits will also be made to the 14(c) online application where applicable. These revisions are necessary to align the Department's information collection with the changes proposed in the NPRM and for the agency to more effectively and efficiently fulfill its obligation to oversee and enforce section 14(c) certificates to the extent they are necessary to prevent the curtailment of opportunities for employment for workers with disabilities.

Should the Department issue a final rule to section 14(c), and OMB approves the changes, the Department will finalize the changes to the online section 14(c) platform and submit as a nonsubstantive change request for approval.

FLSA section 11(d), 29 U.S.C. 211(d), authorizes the Secretary 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. The Department 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 CFR 530.1, 530.2.

Employers and individual homemaker applicants use Form WH-2 when obtaining certificates to employ individual homeworkers in one of the restricted homework industries. Upon application by the homemaker and the employer, the Department may issue a certificate to the employer authorizing employment of an individual homemaker, 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 CFR 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 CFR 530.102), the name, address, and description of the business operations of the applicant (29 CFR 530.102) and certain written assurances (29 CFR 530.103).

Special Employment Under the Fair Labor Standards Act  
OMB Control Number 1235-0001  
OMB Expiration Date: July 2027

Upon approval of the application, the Department issues a certificate authorizing employment of homeworkers in the restricted industry. Unless suspended or revoked, such certificates are valid for two-year periods. 29 CFR 530.101(b).

The regulations require that employers in the restricted industries under the certification program that 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 the Department upon request. 29 CFR 530.202(a).

Pursuant to 29 CFR 516.31(c), an employer must obtain from the Department 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, 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 CFR 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 the Department, 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 CFR 29.5(b)(5)). As a result, the Department has not issued any apprentice certificates since 1987. As explained in response to Question 6, the Department must maintain the information collection 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. The Department has received no applications for messengers since 1949 but must maintain the information collection to fulfill its statutory obligation under the FLSA.

FLSA section 14(b) requires that the Secretary, 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 CFR 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 CFR 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 CFR 519.3-.6, 519.13-.16. These subminimum wage certificates generally remain valid for one year. *See* 29 CFR 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 CFR 519.1(b), 519.11(b).

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

A. Forms WH-226 (Application for Authority to Employ Workers with Disabilities at Subminimum Wages) and WH-226A (Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Subminimum Wages)

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 CFR 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 investigations as to whether employers are in compliance with section 14(c).

B. Forms WH-2 (Application for Special Industrial Homeworker's Certificate), WH-46 (Application for Certificate to Employ Homeworkers), piece rate measurements, and WH-75 (Homeworker Handbook)

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

Form WH-46 is an application to employ homeworkers. The application process provides the Department 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 the Department 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 Department 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 CFR 530.202. Failure to require such documentation would impair the Department'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 CFR 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 CFR 516.31(c). The Department 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 Department’s ability to ensure FLSA compliance.

C. Forms WH-200 (Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519); WH-201 (Higher Education to Employ its Full-time Students at Subminimum Wages Under Regulations 29 CFR Part 519); WH-202 (Application for Authority to Employ Six or Fewer Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519)

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 the Department maintain a copy of any submitted form. The Department reviews each form to determine whether to grant or deny subminimum wage authority.

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

An institution of higher education uses Form WH-201 to request authority to pay subminimum wages to its full-time student employees. The reverse side of Form WH-201 also serves as a “Notice of Temporary Authority” poster that provides temporary authority for the institution to employ full-time students at subminimum wages for a period of up to one year after forwarding the properly completed application to the Department, 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).

D. Forms WH-205 (Application for Authorization to Employ A Student-Learner at Subminimum Wages) and WH-209 (Application for a Certificate to U.S. Department of Labor Employ Messengers/Learners at Subminimum Wages)

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 the Department's Office of Apprenticeship no longer permit the payment of subminimum wage rates to apprentices in an approved program (29 CFR 29.5(b)(5)). As a result, the Department has issued no apprentice certificates since 1987. As explained in response to Question 6, the Department must maintain the information 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. The Department has received no applications for messengers since 1949 but must maintain the information collection 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.**

A. Forms WH-226 (Application for Authority to Employ Workers with Disabilities at Subminimum Wages) and WH-226A (Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Subminimum Wages)

The Department makes Forms WH-226 and WH-226A and instructions for completing them available in a fillable Adobe PDF format for downloading and printing from the Department's website at: <https://www.dol.gov/agencies/whd/forms/wh226>. Respondents currently have the option of either mailing the form(s) or completing and submitting an application using the section 14(c) online application system.

B. Forms WH-2 (Application for Special Industrial Homeworke's Certificate), WH-46 (Application for Certificate to Employ Homeworke's), piece rate measurements, and WH-75 (Homeworke's Handbook)

The Department recognizes the value of technology in reducing burden on respondents in completing these forms. These forms are available in fillable Adobe PDF format for downloading, completing, and printing from the Department's website:

- WH-2: <https://www.dol.gov/agencies/whd/forms/wh2-wh46>
- WH-46: <https://www.dol.gov/agencies/whd/forms/wh2-wh46>
- WH-75: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH75EN.pdf>

Respondents must mail the application to the Department upon completion. In accordance with the Paperwork Reduction Act, the Department has assessed the practicability of developing an online submission option for WH-46 and WH-75 and determined it is not practical to do so. The Regulations at 29 CFR 530.102 require the employer to sign the initial request for certification or

renewal (Form WH-46). In order to meet this regulatory requirement, the Department would need to purchase a Public Key Infrastructure (PKI) certificate for each authorized employer at a cost of \$25.00 to \$35.00 per certificate compared to the mailing cost for each mailed submission. Further, the Department would have to develop a 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-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 uses Form WH-75. The form is fillable, printable, and posted at: <https://www.dol.gov/agencies/whd/forms>, in both English and Spanish. The Department only reviews this information in connection with an investigation under the FLSA. As a result, an online submission option is not practicable for these recordkeeping requirements.

C. Forms WH-200 (Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519); WH-201 (Higher Education to Employ its Full-time Students at Subminimum Wages Under Regulations 29 CFR Part 519); WH-202 (Application for Authority to Employ Six or Fewer Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519)

The Department enters information collected on Forms WH-200, WH-201, and WH-202 into the Department's Certificate Processing System (CPS). The CPS allows the Department 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 12 months) to an employer applying to renew an existing authorization. In compliance with the Paperwork Reduction Act, the Department makes Forms WH-200, WH-201, and WH-202 available in PDF fillable format for printing and downloading at: <https://www.dol.gov/agencies/whd/forms/wh200-wh201-wh202>.

The Department also assessed the practicability of developing an online submission option for these forms but determined it is not practical to do so. The regulations at 29 CFR 519.3(a) require that the employer's authorized representative sign the application (i.e., Forms WH-200, WH-201, and WH-202). In order to meet this requirement, the Department would need to obtain a PKI certificate for each authorized employer representative, costing the agency \$25.00 to \$35.00 for each PKI certificate compared to the mailing cost for each mailed submission. The Department 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 paper Forms WH-200, WH-201, or WH-202 and not be justified for an information collection that receives less than 400 annual responses.

D. Forms WH-205 (Application for Authorization to Employ A Student-Learner at Subminimum Wages) and WH-209 (Application for a Certificate to U.S. Department of Labor Employ Messengers/Learners at Subminimum Wages)

Forms WH-205 and WH-209 are rarely used. The Department has not posted Form WH-209 because the agency does not anticipate receiving any requests under the messenger/learner program. The Department has posted Form WH-205 and the accompanying instructions on the Department Web site at: <https://www.dol.gov/agencies/whd/forms/wh205>. The Department

accepts fax transmissions of the completed applications associated with this information collection.

The Department assessed the practicability of developing an online submission option for this information collection and has determined it is not practical to do so. The employer, the appropriate school official, and the student-learner must sign Form WH-205. *See* 29 CFR 520.501(b). The Department would need to obtain a PKI certificate for each authorized employer in order to meet this regulatory requirement. The Department has been informed that each PKI certificate would cost the agency \$25.00 to \$35.00, compared to the mailing cost of for each mailed submission. The Department 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 purposes described in Item A.2 above.**

No similar information is available from any other source.

**5. If the collection of information impacts small businesses or other small entities, describe any 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 determine if an employer qualifies for a certificate. The data collection gathers additional information on individual workers to better assist the agency in preventing abuse of a vulnerable worker population. The Department 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 has 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 the Department 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 Department generally requires employers to submit a renewal application every two years. If this rule proposing to phaseout issuance of renewal certificates becomes final, the Department could consider extending the effective period of certificates issued during the phase out period. Under 29 U.S.C. 214(c)(1), 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, the Department 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 Department 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 CFR 516.31(c). The statutory provisions of the FLSA generally use the workweek as the basis for determining compliance for proper wage payments. *See* 29 U.S.C. 207(a); 29 CFR 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 CFR 519.4(b), 519.6(a), 519.14(b), 519.16(a). Less frequent application would make it difficult for the Department 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 Department 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 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 secret, 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 recordkeeping, disclosure, or reporting format (if 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 December 4, 2024, the Wage and Hour Division (WHD) published a notice of proposed rulemaking (89 FR 96466) in the *Federal Register*, proposing to revise and extend this Information Collection and seeking public comment on all elements of the proposed extension.

**9. Explain any decision to provide any payments or gifts to respondents, other than remuneration of contractors or grantees.**

The Department offers no payments or gifts to respondents in connection with this information collection.

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

The Department makes no assurances of confidentiality to respondents. As a practical matter, the Department 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; and the attendant regulations, [29 CFR part 70](#), and the Privacy Act, 5 U.S.C. 552a; and related regulations, [29 CFR part 71](#). However, some data is public data and posted on the WHD website. For example, a listing of current certificate holders and pending applicants under the section 14(c) certificate program is publicly available at this link:

<http://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>

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 Department only issues certificates for employers employing individuals who meet the provisions established by the law.

The Department requires that employers list the names of workers paid a subminimum wage who are age 24 or younger. The Department does not believe this is 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 the Workforce Innovation and Opportunity Act (WIOA). WIOA amended 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. Specifically, before an employer may pay a worker with a disability who is age 24 or younger a subminimum wage, WIOA requires that the employer review, verify, and maintain documentation indicating that the worker received required transition services, vocational rehabilitation services, and career counseling services. The FOIA and Privacy Act protect the information and regulate the circumstances under which the Department may disclose such information.

Forms WH-46, WH-75, WH-200, WH-201, WH-202, WH-205, and WH-209 contain no sensitive questions.

**12. Provide estimates of the hour burden of the collection of information. 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.**

**Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

A. Forms WH-226 (Application for Authority to Employ Workers with Disabilities at Subminimum Wages) and WH-226A (Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Subminimum Wages)

**WH-226**

If the NPRM results in a final rule, as of the effective date of the final rule, the Department estimates 441 renewal respondents use form WH-226 one time annually. These numbers are from actual 2023 data and include 239 electronic submissions and 202 paper form submissions. Based on this 2023 data, 54 percent of applicants complete the form electronically and 46 percent complete the paper form. However, as noted in the NPRM the overall trend of certificate holders has seen a steady decline over the past decade. Therefore, the Department believes that the actual number of submissions may be fewer and, if so, the burden information provided here is likely an overestimate. The Department estimates a renewal applicant requires 75 minutes to complete the form.

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

**Respondents:** 441 applicants

**Responses:** 441 responses

Renewal Forms: 202 (paper) + 239 (electronic) = 441 responses

441 responses × 75 minutes per response = 33,075 minutes

33,075 minutes ÷ 60 minutes per hour = 551 hours<sup>1</sup>

<sup>1</sup> Within each information collection, the respondents and responses are rounded to the nearest

**Burden Hours:** 551 hours

**WH-226A**

441 renewal respondents who fill out WH-226 forms will complete 1,227 WH-226A forms annually and will take an average of 2 hours to complete the form. An initial applicant should have no workers to report on a WH-226A form as described above. These are actual 2023 figures tracked by the Department. A GAO report<sup>2</sup> published in 2001 indicated that businesses on average will employ three workers paid subminimum wages. For such employers, it will take much less than 2 hours to complete the form. The report also indicated that other employers, such as community rehabilitation programs, could employ 80 or more workers paid subminimum wages. For these employers, completing the WH-226A will take a minimum of 2 hours. The Department therefore estimates 2 hours to complete the WH-226A.

In completing the WH-226A form, respondents in 2023 submitted 644 paper forms and 583 electronic forms. The Department uses this actual data for this clearance cycle.

**Respondents:** 441 applicants

**Responses:** 583 responses (electronic) + 644 responses (paper) = 1,227 responses

**Burden Hours:** 1,227 responses × 2 hours = 2,454 hours

**Total Annual Burden Hours for WH-226 and WH-226A:** 551 + 2,454 = 3,005 hours

B. Forms WH-2 (Application for Special Industrial Homeworker's Certificate), WH-46 (Application for Certificate to Employ Homeworkers), Piece Rate Measurements, and WH-75 (Homeworker Handbook)

**WH-2**

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

**Respondents:** 1 applicant

**Responses:** 1 response

**Burden Hours:** 1 response × 30 minutes = 0.5 hours

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whole number.

<sup>2</sup> General Accounting Office (GAO), September 2001, Special Minimum Wage Program, Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight GAO-01-886,

**WH-46**

The Department's data indicate two employers applied and received certificates in 2023. Using 2023 data, the Department estimates that four employers will apply and receive certificates to employ homeworkers in the restricted industries over a 2-year period. The Department estimates that each employer of homeworkers in the restricted industries will spend approximately 30 minutes preparing an application to employ homeworkers.

**Respondents:** 2 applicants

**Responses:** 2 responses

**Burden Hours:** 2 responses  $\times$  30 minutes = 1 hour

**Piece Rate Measurements for Homeworkers**

Based on the WH-46 applicants, the Department estimates four employers will hold certificates per year. The Department estimates that 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.

**Respondents:** 4 employers

**Responses:** 4 respondents  $\times$  3 measurements = 12 responses

**Burden Hours:** 12 responses  $\times$  1 hour per response = 12 hours

**WH-75**

The Department estimates that the number of homeworkers in all occupations who are not exempt from the FLSA is 334,200 (approximately 111.4 million workers  $\times$  0.003). The Department estimates an average burden of 30 minutes per Homeworker Handbook, with each respondent maintaining four handbooks annually.

**Respondents:** 334,200 homeworkers

**Responses:** 334,200 respondents  $\times$  4 handbooks = 1,336,800 responses

**Burden Hours:** 1,336,800 responses  $\times$  30 minutes  $\div$  60 minutes per hour = 668,400 hours

**Total Annual Burden Hours for WH-2, WH-46, Piece Rate Measurements, and WH-75:**  
**0.5 + 1 + 12 + 668,400 = 668,413.5 hours**

C. Forms WH-200 (Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519); WH-201 (Higher Education to Employ its Full-time Students at Subminimum Wages Under Regulations 29 CFR Part 519); WH-202 (Application for

Authority to Employ Six or Fewer Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519)

**WH-200**

The Department annually receives seven applications based on the Department's 2023 data. The Department estimates it takes each applicant 30 minutes to complete and file this application.

**Respondents:** 7 applicants

**Responses:** 7 applications

**Burden Hours:** 7 responses  $\times$  30 minutes  $\div$  60 minutes per hour = 3.5 hours

**WH-201**

The Department annually receives nine applications based on the Department's 2023 data. The Department estimates it takes 30 minutes to complete and file the information collection as well as post the notice to employees providing temporary authority to pay full-time students at subminimum wages.

**Respondents:** 9 applicants

**Responses:** 9 applications

**Burden Hours:** 9 responses  $\times$  30 minutes  $\div$  60 minutes per hour = 4.5 hours

**WH-202**

The Department annually receives seven applications based on the Department's 2023 data. The Department estimates it takes 20 minutes to complete and file an application.

**Respondents:** 7 applicants

**Responses:** 7 applications

**Burden Hours:** 7 responses  $\times$  20 minutes  $\div$  60 minutes per hour = 2.33 hours

**Total Annual Burden Hours for WH-200, WH-201, and WH-202: 3.5 + 4.5 + 2.33 = 10.33 hours**

D. Forms WH-205 (Application for Authorization to Employ A Student-Learner at Subminimum Wages) and WH-209 (Application for a Certificate to U.S. Department of Labor Employ Messengers/Learners at Subminimum Wages)

**WH-205**

The Department receives 32 applications annually based on the Department's 2023 data. The agency estimates it takes 30 minutes for each respondent to complete the form.

Special Employment Under the Fair Labor Standards Act  
 OMB Control Number 1235-0001  
 OMB Expiration Date: July 2027

**Respondents:** 32 applicants

**Responses:** 32 applications

**Burden Hours:** 32 responses × 30 minutes ÷ 60 minutes per hour = 16 hours

**WH-209**

The Department has issued no certificates for learners/messengers since 1949. The Department estimates it would take approximately 20 minutes to complete a learner/messenger application. However, since the Department anticipate receiving no applications, it associates no reporting burden or respondent costs with this aspect of the information collection.

**Respondents:** 0 applicants

**Responses:** 0 applications

**Burden Hours:** 0 hours

**Application to Employ Apprentices at Subminimum Wages**

The Department estimates receiving zero applications annually. The Department estimates that the submission of a copy of an approved apprenticeship program takes approximately one minute. The Department currently associates no annual burden and no respondent costs for this component of the information collection since the Office of Apprenticeship (a separate agency within the Department) regulations preclude approving apprenticeship programs employing apprentices at subminimum wage rates.

**Respondents:** 0 applicants

**Responses:** 0 applications

**Burden Hours:** 0 hours

**Total Annual Burden Hours for WH-205, WH-209, and Applications to Employ Apprentices: 16 hours**

Annualized Estimate Respondent Hour and Cost Burden

\*Note that respondents for WH-226 renewal are same as for WH-226A

Activity/Form	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Average Burden per Response (in minutes)	Total Burden Hours
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Special Employment Under the Fair Labor Standards Act

OMB Control Number 1235-0001

OMB Expiration Date: July 2027

<b>WH-226 Initial</b>	0	1	0	50	0
<b>WH-226 Renewal</b>	441	1	441	75	551
<b>WH-226A</b>	441*	various	1,227	120	2,454
<b>WH-2</b>	1	1	1	30	0.5
<b>WH-46</b>	2	1	2	30	1
<b>Piece Rate</b>	4	3	12	60	12
<b>WH-75</b>	334,200	4	1,336,800	30	668,400
<b>WH- 200</b>	7	1	7	31	3.5
<b>WH-201</b>	9	1	9	31	4.5
<b>WH-202</b>	7	1	7	21	2.33
<b>WH-205/209/ Apprentices</b>	32	1	32	30	16
<b>Unduplicated Totals</b>	<b>335,144</b>		<b>1,338,538</b>		<b>671,445</b>

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.

The Department has used the August 2024 average hourly base rate for production for nonsupervisory workers on nonfarm payrolls of \$30.26 to determine respondent costs. (See The Employment Situation, August 2024, Table B-8, (<https://www.bls.gov/news.release/empsit.t24.htm>; also loaded into ROCIS as a supplementary document.)

The Department adds 45 percent fringe benefits cost and 17 percent overhead cost to the base rate of \$30.26. This results in a loaded wage rate of \$49.02 per hour.

Fringe benefits cost per hour:  $\$30.26 \times 0.45 = \$13.62$

Overhead cost per hour:  $\$30.26 \times 0.17 = \$5.14$

Loaded hourly wage rate:  $\$30.26 + \$13.62 + \$5.14 = \$49.02$

671,445 burden hours  $\times \$49.02 = \$32,914,233.90$

**Total estimated burden cost: \$32,914,233.90**

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers 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 service 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 collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

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

A. Forms WH-226 (Application for Authority to Employ Workers with Disabilities at Subminimum Wages) and WH-226A (Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Subminimum Wages)

Special Employment Under the Fair Labor Standards Act

OMB Control Number 1235-0001

OMB Expiration Date: July 2027

202 WH-226 renewal paper forms + 644 WH-226A paper forms = 846 mailings

846 mailings × (\$2.59 postage + \$0.03 per envelope) = \$2,216.52

B. Forms WH-2 (Application for Special Industrial Homeworker's Certificate), WH-46 (Application for Certificate to Employ Homeworkers), piece rate measurements, and WH-75 (Homeworker Handbook)

There are no cost burdens for respondents or recordkeepers associated with piece rate measurements or the WH-75.

1 WH-2 + 2 WH-46 = 3 mailings

3 mailings × (\$0.68 postage + \$0.03 per envelope) = \$2.13

C. Forms WH-200 (Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519); WH-201 (Higher Education to Employ its Full-time Students at Subminimum Wages Under Regulations 29 CFR Part 519); WH-202 (Application for Authority to Employ Six or Fewer Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519)

7 WH-200 + 9 WH-201 + 7 WH-202 = 23 mailings

23 mailings × (\$0.68 postage + \$0.03 per envelope) = \$16.33

D. Forms WH-205 (Application for Authorization to Employ a Student-Learner at Subminimum Wages) and WH-209 (Application for a Certificate to U.S. Department of Labor Employ Messengers/Learners at Subminimum Wages)

32 WH-205 + 0 WH-209 = 32 mailings

32 mailings × (\$0.68 postage + \$0.03 per envelope) = \$22.72

**Total Start-up, Capital, Maintenance, and Operations Costs: \$2,216.52 + \$2.13 + \$16.33 + \$22.72 = \$2,257.70**

**14. Provide estimates of the annualized cost 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), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.**

A. Forms WH-226 (Application for Authority to Employ Workers with Disabilities at Subminimum Wages) and WH-226A (Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Subminimum Wages)

The Department estimates the annualized federal cost for Forms WH-226 and WH-226A to be \$42,675.79. This includes the cost of processing the forms. The Department estimates 441 WH-226 renewal forms per year. The forms are processed by a GS-12, Step 4 federal employee who earns \$51.17 per hour in Chicago, Illinois. Forms take approximately 30 minutes to process.

**WH-226**

441 forms × 30 minutes per form ÷ 60 minutes per hour = 220.5 hours

220.5 hours × \$51.17 = \$11,282.99

**WH-226A**

1,227 forms × 30 minutes per form ÷ 60 minutes per hour = 613.5 hours

613.5 hours × \$51.17 = \$31,392.80

**Total Federal Costs for WH-226 and WH-226A: \$11,282.99 + \$31,392.80 = \$42,675.79.**

There is no separate mailing cost for Forms WH-226 and WH-226A as these forms may be printed from the Department website or completed online.

B. Forms WH-2 (Application for Special Industrial Homeworker's Certificate), WH-46 (Application for Certificate to Employ Homeworkers), piece rate measurements, and WH-75 (Homeworker Handbook).

**WH-2**

The Department estimates the annualized federal costs for Applications for Certificate to Employ Homeworkers (WH-2) to be zero.

**WH-46**

The Department estimates the annualized federal cost for Applications to Employ Homeworkers (WH-46) to be \$51.17. This includes the cost of processing the application. The forms are processed by a GS-12, Step 4 federal employee who earns \$51.17 per hour in Chicago, Illinois.

Special Employment Under the Fair Labor Standards Act  
OMB Control Number 1235-0001  
OMB Expiration Date: July 2027

Forms take approximately 30 minutes to process. Based on Department data from 2023, the Department estimates an average of 2 applications per year.

$2 \text{ applications} \times 0.5 \text{ hours} = 1 \text{ hour}$

$1 \text{ hour} \times \$51.17 \text{ per hour} = \$51.17$

### **Piece Rate Measurements**

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

### **WH-75**

The Department estimates an average of four homeworkers for each employer subject to this information collection. Taking into account the number of employers in the certification program (4) and estimated number of employers currently requesting Handbooks (Form WH-75) in the unrestricted industries annually, the Department estimates it will receive 179 requests for Homeworker Handbooks. Previous experience indicates that annually each homeworker uses an average of four handbooks. Accordingly, the Department will annually print and mail an estimated 716 handbooks.

$179 \text{ homeworkers} \times 4 \text{ handbooks} = 716 \text{ handbooks}$

Printing:  $716 \text{ handbooks} \times \$0.54 \text{ per handbook} = \$386.64$

Postage:  $179 \text{ mailings} \times \$1.38 = \$247.02$

**Total Federal Costs for Forms WH-2, WH-46, Piece Rate Measurements, and WH-75:**  
 **$\$51.17 + \$386.64 + \$247.02 = \$684.83$**

C. Forms WH-200 (Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519); WH-201 (Higher Education to Employ its Full-time Students at Subminimum Wages Under Regulations 29 CFR Part 519); WH-202 (Application for Authority to Employ Six or Fewer Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture Under Regulations 29 CFR Part 519)

The Department estimates annualized federal costs for information collections include printing, mailing, processing and filing a total of 23 applications for forms WH-200, WH-201, WH-202 to be \$253.10. Mailing and filing each require about one minute per form. Processing the forms takes approximately 10 minutes per application. The forms are processed by a GS-12, Step 4 federal employee in Chicago, Illinois who earns \$51.17 per hour.

$7 \text{ WH-200} + 9 \text{ WH-201} + 7 \text{ WH-202} = 23 \text{ forms}$

Printing:  $23 \text{ forms} \times 2 \text{ pages per form} \times \$0.03 \text{ per page} = \$1.38$

Special Employment Under the Fair Labor Standards Act

OMB Control Number 1235-0001

OMB Expiration Date: July 2027

Postage: 23 mailings  $\times$  (\$0.68 postage + \$0.03 per envelope) = \$16.33

Mail Processing: 1 minute  $\times$  23 forms  $\div$  60 minutes per hour  $\times$  \$51.17 = \$19.62

Filing: 1 minute  $\times$  23 forms  $\div$  60 minutes per hour  $\times$  \$51.17 = \$19.62

Form Processing: 10 minutes  $\times$  23 applications  $\div$  60 minutes per hour  $\times$  \$51.17 = \$196.15

**Total Annual Federal Cost for Forms WH-200, 201, and 202: \$1.38 + \$16.33 + \$19.62 + \$19.62 + \$196.15 = \$253.10**

D. Forms WH-205 (Application for Authorization to Employ A Student-Learner at Subminimum Wages) and WH-209 (Application for a Certificate to U.S. Department of Labor Employ Messengers/Learners at Subminimum Wages)

The Department estimates annualized federal costs for form WH-205 applications to be \$272.74. The Department analyzes and approves the initial applications for certification. Analysis of each application takes approximately 10 minutes. Form WH-205 applications are processed by a GS-12, Step 4 federal employee in Chicago, Illinois who earns \$51.17 per hour.

32 applications  $\times$  10 minutes  $\div$  60 minutes per hour = 5.33 hours

5.33 hours  $\times$  \$51.17 = \$272.74

There are no federal costs associated with WH-209.

**Total Annual Cost for Forms WH-205: \$272.74**

Total Annual Federal Costs

WH-226 and WH-226A: \$42,675.79

WH-2, WH-46, Piece Rate Measurements, and WH-75: \$684.83

WH-200, WH-201, WH-202: \$253.10

WH-205 and WH-209: \$272.74

**Total Annual Federal Costs: \$42,675.79 + \$684.83 + \$253.10 + \$272.74 = \$43,886.46**

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

As of the effective date of the final rule, no new section 14(c) certificates will be issued, as a result there will be a decrease in respondents, responses, burden hours, burden costs. The section 14(c) final rule phases out the issuance of section 14(c) renewal certificates over a 3-year period. Three years after the effective date of the final rule, all respondents, responses, burden hours, and burden

costs associated with FLSA section 14(c) will be reduced to zero.<sup>3</sup> However, there is an increase in burden costs due to increased employee wages and benefits as well as postage rates.

**16. For collections of information whose results will be published, outline plans for tabulations, 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 section 14(c) certificate holders (relating to the WH-226 and WH-226A) is published on the WHD website <http://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>. The name and address of the employer is listed along with the start and end date of the certificate, whether the application is an initial or renewal application, information about the number of workers with disabilities paid at a subminimum wage rate by the certificate holder during the certificate holder's most recently completed fiscal quarter, and whether the employer indicated having any McNamara-O'Hara Service Contract Act or Walsh-Healy Public Contracts Act contracts at the time of application. The webpage generally is updated each month. 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.**

The Department is not requesting an exception to the requirement to display the expiration date on this information collection.

**18. Explain each exception to the certification statement.**

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

**Part B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.**

This information collection does not employ statistical methods.

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<sup>3</sup> The Department estimates there will be a 33 percent reduction in renewal applicants each year during the three-year phase out period.