



## DEPARTMENT OF LABOR

### Wage and Hour Division

#### Agency Information Collection Activities; Comment Request; Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department) is soliciting comments concerning a proposed revision of the information collection request (ICR) titled “Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act.” This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). The Department proposes to revise and extend the existing information collection with minor clarifying changes to the collection instruments. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN **FEDERAL REGISTER**].

**ADDRESSES:** You may submit comments identified by Control Number 1235-0001 by either one of the following methods: *E-mail:* WHDPRAComments@dol.gov; *Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210.

*Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Commenters are encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

**FOR FURTHER INFORMATION CONTACT:** Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1-866-487-9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:**

I. Background: The Department's Wage and Hour Division (WHD) administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.*, which sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206, 207, 211, 212. FLSA section 14(c) provides that the Secretary of Labor (Secretary), "to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals" whose productivity for the work performed is limited by disability at subminimum wages commensurate with the individual's productivity. 29 U.S.C. 214(c). In accordance with section 14(c), WHD regulates the employment of individuals with disabilities under special certificates and governs the application and approval process for obtaining the certificates. *See* 29 CFR part 525. The information collections on the forms (Form WH-226, the Application for Authority to Employ Workers with Disabilities at Subminimum Wages, and Form WH-226A, the Supplemental Data Sheet for

Application for Authority to Employ Workers with Disabilities at Subminimum Wages) assists the Department in fulfilling its statutory directive to administer and enforce the section 14(c) program, including the conditions introduced to section 14(c) certificate holders pursuant to the Workforce Innovation and Opportunity Act (WIOA), which was signed into law on July 22, 2014.

In addition, section 11(d) of the FLSA authorizes the Secretary to regulate, restrict, or prohibit industrial homework as necessary to prevent circumvention or evasion of the minimum wage requirements of the FLSA. 29 U.S.C. 211(d). Pursuant to section 11(d), WHD issues special certificates governing the employment of individual homeworkers and employers of homeworkers. The Department restricts homework in seven industries (i.e., knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries) to those employers that obtain certificates. *See* 29 CFR 530.1, 530.2. The Department may issue individual certificates in those industries for an individual homemaker (1) who is unable to adjust to factory work because of a disability or who must remain at home to care for a person with a disability in the home, and (2) who has been engaged in industrial homework in the particular industry prior to certain specified dates as set forth in the regulations or is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency. *See* 29 CFR 530.3, 530.4. The Department also allows employers to obtain general (employer) certificates to employ homeworkers in all restricted industries, except women's apparel and hazardous jewelry manufacturing operations. *See* 29 CFR 530.101. Form WH-2, the Application for Special Industrial Homemaker's Certificate, and Form WH-46, the Application for Certificate to Employ Homeworkers, are used in the application process for obtaining these certificates, and Form WH-75, Homemaker Handbook, is used to assist with recordkeeping.

The FLSA also 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), (3); 29 CFR part 519); 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 part 519). The FLSA and the regulations set forth the application requirements as well as the terms and conditions for the employment of full-time students at subminimum wages under certificates and temporary authorization to employ such students at subminimum wages. The forms used to apply for these certificates are WH-200 (retail, service, or agricultural employers seeking to employ full-time students for 10 percent or more of total monthly hours of employment), WH-201 (institution of higher learning seeking to employ its students), and WH-202 (retail, service, or agricultural employers seeking to employ six or fewer full-time students).

Under section 14(a) of the FLSA, the Secretary is required to provide, by regulation or order, a special certificate for the employment of learners, apprentices, and messengers who may be paid less than the Federal minimum wage set by section 6(a) of the FLSA. *See* 29 U.S.C. 214(a). The certificates are only issued to the extent necessary to prevent the curtailment of employment opportunities. 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's Office of Apprenticeship no longer permit the payment of subminimum wages to apprentices in an approved program, and the Department therefore has not issued apprentice certificates since 1987. *See* 29 CFR 29.5(b)(5). However, WHD must maintain the information collection for apprentice certificates to fulfill its statutory obligation under FLSA to maintain this program.

II. Review Focus: The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department seeks approval for a revision of this information collection in order to ensure effective administration of various special employment programs.

*Type of Review:* Revision.

*Agency:* Wage and Hour Division.

*Title:* Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act.

*OMB Control Number:* 1235-0001

*Affected Public:* Business or other for-profit, not-for-profit institutions, Federal, State, local, or Tribal government.

*Agency Numbers:* Forms WH-226, WH-226A, WH-2, WH-46, WH-75, WH-200, WH-201, WH-202, WH-205, WH-209

*Total Respondents:* 335,167

*Total Annual Responses:* 1,338,561

*Estimated Total Burden Hours:* 671,464

*Estimated Time per Response:* Varies with type of request.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):* \$2,249.66

Dated: January 30, 2024.

**Amy Hunter,**

*Director, Division of Regulations, Legislation, and Interpretation*

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