

OMB No. 1215-0001
Supporting Statement
Employment Information Form
Forms WH-3 and WH-3 Sp

1. Fair Labor Standards Act (FLSA) section 11(a), 29 U.S.C. § 211(a), provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, or other conditions and practices of employment in any industry subject to the FLSA, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to determine whether any person has violated any provision of the FLSA.

Other Federal laws the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) administers provide similar authority. These Acts include the: Walsh-Healey Public Contracts Act (41 U.S.C. § 38.), McNamara-O’Hara Service Contract Act (41 U.S.C. § 353(a)), Davis-Bacon Act (40 U.S.C. § 3141, pursuant to Reorganization Plan No. 14 of 1950, and Related Acts), Consumer Credit Protection Act (15 U.S.C. § 1676), Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1862(a)), Employee Polygraph Protection Act (29 U.S.C. § 2004(a)(3)), and Family and Medical Leave Act (29 U.S.C. § 2616(a)). The regulatory provisions authorizing the filing of complaints under these laws and how the agency acts upon the concerns can be found at 29 C.F.R. §§ 4.191, 5.6, 500.1(e), 801.7(a)(3), 825.401, and 41 C.F.R. § 50-201.1202.

2. Form WH-3 is an optional form complainants (*e.g.*, current and former employees, unions, and competitor employers) may use to provide information to the WHD about alleged violations of the labor standards provisions of the above-cited Acts. Complainants sometimes complete the form themselves, typically in consultation with WHD staff; more frequently, complainants provide the information requested by the form to WHD staff on the phone. WHD staff will complete the form if the information provided supports a potential WHD enforcement action. If it does not, complainants are referred to the appropriate agency or advised that nothing can be done to resolve their problem. The Form WH-3 is available in both English and Spanish. When the WHD schedules a complaint-based investigation, the agency makes the completed Form WH-3 part of the investigation case file.
3. The DOL has considered developing an automated complaint system or making Form WH-3 available on the Internet and determined it would have a negative effect on the ability of the WHD to provide quality, timely service to potential complainants and be impractical to implement.

The ability to screen complaints during the intake process is critical to effectively meeting the potential complainants’ needs. Long experience has shown that well over half of the potential complainants contacting the WHD complain of problems that the WHD cannot resolve, for a variety of reasons. These reasons include lack of a federal

WH law covering their complaint, an employer not covered by federal WH laws, an employee exempt from otherwise applicable WH law provisions, violation(s) past the statute of limitations for WHD action, or the issues involved are better serviced by another federal or state agency.

Allowing the submission of WH-3 forms completed without WHD consultation will generate tens of thousands of complainants who will file their complaints in the erroneous belief the WHD can help with their problem. These non-actionable complaints will require extensive WHD follow-up to secure additional information, or notification of complainants that they should have contacted another federal or state agency, or that nothing can be done on their problem. These individuals are better and more timely served through an initial, personal (by phone or in-person) consultation with the WHD. Potential complainants are encouraged to call (using a toll-free number) or visit the nearest WHD office in virtually all WHD compliance assistance materials, website programs and guides if they wish to file a complaint.

Implementation of an automated complaint system using the WH-3 would be impractical given available technology and agency resources. An automated system would greatly **decrease** the quality of customer service provided to potential complainants while increasing the burden on a public (which will be providing information in a large number of instances where the WHD can provide no assistance).

4. This information collection does not duplicate existing WHD requirements. No similar information is available from any other source, since enforcement of the various labor standards laws previously listed is unique to the WHD. A separate statutorily mandated information collection, OMB Control No. 1205-0310, covers the filing of complaints under the H-1B program of the Immigration and Nationality Act, and this information collection does not duplicate that data.
5. This information collection does not have a significant economic impact on a substantial number of small entities. This information collection does infrequently involve small businesses, as in the case of competitor complaints. Form WH-3 provides an easy option for complainants to provide the information necessary for the WHD to determine if it is likely that a violation of the law has occurred and to schedule an investigation.
6. Complainants respond to this information collection only when they seek WHD assistance in addressing one or more alleged labor standards violation(s); consequently there is no way to request the information less frequently and still collect it. Complaints provide the basis for the overwhelming majority of WHD compliance actions, and the agency would lose an efficient and reliable tool for assessing violations were there no means to obtain information from complainants.
7. This information collection does not involve any special circumstances.

8. The DOL published a notice in the Federal Register, seeking public comments regarding this information collection. 71 Fed. Reg. 70794 (Dec. 6, 2006). The agency received one comment suggesting that the agency suspend this information collection in favor of addressing violations that take place in animal processing plants. As previously indicated, this information collection allows complainants to provide information to the WHD about alleged labor standards violations, including those occurring in animal processing plants. Complaints provide lead information for the majority of WHD's compliance actions, and the agency would lose an efficient and reliable tool for assessing potential violations if there were no means efficiently to obtain such information from complainants. Contacts with complainants during the course of responding to the information collection have not indicated any substantive problems with providing the information required on the form.
9. The DOL offers no payments or gifts to respondents.
10. The DOL gives an assurance of confidentiality on the form, which provides that the agency will keep the respondent's identity confidential to the maximum extent possible under existing law. Information gathered during the course of an investigation of a complaint is disclosed only in accordance with the provisions of the Freedom of Information Act (5 U.S.C. § 552), regulations 29 C.F.R. part 70, the Privacy Act (5 U.S.C. § 552a), and regulations 29 C.F.R. part 71.
11. This information collection requests no sensitive information.
12. Using the historical average of the number of complaints filed during the past 3 years, the WHD estimates it annually receives about 35,000 complaints. Agency experience also indicates a typical complainant spends about twenty minutes completing or providing information needed to complete the Form WH-3. This produces an annual burden of 11,667 hours. $35,000 \text{ annual responses} \times 20 \text{ minutes} = 700,000 \text{ minutes or } 11,667 \text{ hours}.$

Complainants alleging violations of WHD-enforced labor standards may be employees of any of a wide variety of businesses, from small farms or retail stores to large manufacturing plants. Absent specific wage data regarding complainants, the DOL has used the average hourly rate of non-supervisory workers on non-farm payrolls for July 2006 of \$16.71 to estimate respondent costs. *See The Employment Situation, September 2006*, DOL, Bureau of Labor Statistics. The DOL estimates total annual respondent costs to be \$194,955.57. $\$16.71 \times 11,667 \text{ hours} = \$194,955.57.$

13. Respondents incur no costs, other than the value of their time. *See* Item 12. The WHD provides a pre-addressed, postage-paid envelope to persons submitting Form WH-3 by mail.
14. The DOL annually prints approximately 35,000 Forms WH-3, at the cost of \$1575.00.

Of this number, the agency mails approximately 30% to complainants. The agency also provides a preaddressed, postage paid envelope for returning the completed Form WH-3 to the WHD. The DOL estimates mailing costs to be \$8610.00. $10,500 \text{ forms} \times (\$.37 \text{ postage} + \$.03) \text{ per envelope} \times 2 \text{ directions} = \8610.00 .

The DOL further estimates a GS 12/4 Investigator needs approximately 20 minutes to complete a Form WH-3 (70 percent of 35,000 forms), incurring a cost of \$134,055.83. $24,500 \text{ forms} \times 10 \text{ minutes} \times \$32.83 \text{ per hour (GS 12/4, Rest of U.S.)} = \$134,055.83$.

The DOL estimates complainants complete about 30 percent of all submitted Forms WH-3, and a GS 13/4 Investigator needs about 15 minutes to analyze each form to determine whether a potential violation of the law exists. This produces a cost of \$102,480.00. $\$.39.04 \text{ (GS 13/4, Rest of U.S.) per hour} \times .25 \text{ hours} \times 10,500 \text{ forms} = \$102,480.00$.

TOTAL ESTIMATED ANNUALIZED FEDERAL COSTS = \$246,720.83.

15. The adjustments reported in this supporting statement stem from increased labor costs.
16. The DOL does not publish this information.
17. The DOL will display the expiration date for this information collection.
18. The DOL is not requesting an exception to the certifications for paperwork submissions.