

Supporting Statement
Regulations, 29 C.F.R. Part 520
Employment of Apprentices, Messengers, and Learners
(Including Student-Learners and Student-Workers)
Forms WH-205 and WH-209
OMB Control Number 1215-0192

A. Justification

1. Circumstances Necessitating Information Collection

Fair Labor Standards Act (FLSA) section 14(a) requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide by regulations or orders for the employment of categories of workers who, under special certificates, may be paid less than the generally applicable minimum wage set by section 6(a) of the FLSA. 29 U.S.C. §§ 206(a), 214(a); *see also* 29 C.F.R. § 520.200. This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion, and length of service. 29 U.S.C. § 214(a). These workers include apprentices, messengers, and learners, including student-learners and student-workers. 29 C.F.R. § 520.200. Regulations found 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 general 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 U. S. Department of Labor (DOL), Bureau of Apprenticeship and Training (BAT) no longer permit the payment of subminimum wages to apprentices in an approved program. 29 C.F.R. § 29.5(b)(5). The DOL, thus, has issued no apprentice certificates since 1987. As explained in Item 6, the Wage and Hour Division (WHD) of the DOL must maintain the information collection in order for the agency to fulfill its statutory obligation under FLSA to maintain this 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. Currently, there are no certificates in effect under this program. The 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.

2. Use

A. Application to Employ Student Learners at Subminimum Wages, Form WH-205

An employer uses Form WH-205 to obtain certificates to employ student-learners at wages lower than the federal minimum wage. *See* 29 C.F.R. § 520.501(b). The submission of this information is voluntary, but failure to submit the information will prohibit the WHD from authorizing the employment of student-learners.

The DOL reviews applications to determine that requirements of Part 520 are met before issuing a certificate to employ student learners at subminimum rates. The DOL may issue certificates to the employer authorizing employment at subminimum wage rates upon application by the employer, the appropriate school official and the student-learner; provided, certain information is made available. 29 C.F.R. § 520.501. The employer must provide a statement outlining the vocational program, particularly showing the processes in which the student-learner will be engaged while training on the job; a statement outlining the school instruction directly related to the job; the student learner's age; and the period of employment at subminimum wages. 29 C.F.R. § 520.502. Regulations, 29 C.F.R. Part 520, Subpart E sets forth all of the requirements concerning the issuance of student-learner certificates.

B. Application for a Certificate to Employ Learners/Messengers at Subminimum Wages, Form WH-209

An employer completes Form WH-209, Application for a Certificate to Employ Learners and/or Messengers at Subminimum Wages, to request a certificate authorizing the payment of learners or messengers at a wage rate less than the general federal minimum wage for a period of up to one year. *See* 29 C.F.R. §§ 520.403(a), .410(a). The FLSA requires that a certificate be issued before subminimum wages can be paid to learners or messengers. 29 U.S.C. § 214(a). The submission of this information is voluntary, but failure to submit the information will prohibit the WHD from authorizing the employment of student-learners. Regulations, 29 C.F.R. Part 520, Subpart D sets forth the requirements for application and issuance of a learner or messenger certificate.

The WHD reviews applications to determine that requirements of Part 520 are met before issuing a certificate to employ learners or messengers at subminimum rates. The employer must post a copy of page one of the completed application form in a conspicuous place in workplaces where he/she intends to employ messengers and/or learners at subminimum rates. 29 C.F.R. § 520.405.

C. Application to Employ Apprentices at Subminimum Wages

There is no application form that employers complete to obtain authority from the DOL to employ apprentices at subminimum wages. The employer or joint apprenticeship committee must submit to the appropriate WHD Regional Office a copy of the registered apprenticeship program or agreement for such apprentices, approved by a recognized apprenticeship agency meeting the basic standards adopted by BAT, upon the recommendation of the Federal Committee on Apprenticeship. 29 C.F.R. §§ 520.201(d), .401(d), .403(b). A registered apprenticeship program is a temporary special certificate authorizing the employment of an apprentice at the wages and under the conditions specified in such program until a special certificate is issued or denied; provided, the employer or the joint apprenticeship committee sends a copy of each apprenticeship agreement with evidence of registration to the appropriate WHD Regional Office within 90 days from the beginning date of the employment of such apprentices. 29 C.F.R. § 520.409(a). Regulations, 29 C.F.R. Part 520, Subpart D sets forth the requirements concerning the issuance of certificates for apprentices.

3. **Technology.**

The DOL accepts faxes of the completed applications associated with this information collection and has posted Form WH-205 and its instructions on the Internet at: <http://www.dol.gov/esa/whd/forms/wh-205.pdf>, pursuant to the Government Paperwork Elimination Act. The DOL has not posted Form WH-209 on the Internet, 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 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. 29 C.F.R. § 520.501(b). The DOL would need to obtain a Public Key Infrastructure (PKI) certificate for each authorized employer in order to meet this regulatory requirement. The WHD has been informed that each PKI certificate would cost the agency between \$25.00 and \$35.00, compared to mailing costs of \$0.45 for each mailed in submission. The DOL would also need to develop the Web page for employers to submit the information. These 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 1000 annual responses.

4. **Duplication**

This information is not available from any other source.

5. Minimizing Small Entity Burden.

This information collection does not have a significant economic impact on a substantial number of small entities. These information collections involve small businesses and nonprofit institutions; however, the required information is the minimum necessary to ensure FLSA compliance.

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

The DOL could not meet the requirements of FLSA section 14(a) or effectively administer these subminimum wage programs were this information collected less frequently. The Act specifically lists the occupations covered by this information collection.

7. Special Circumstances.

There are no special conditions associated with this information collection.

8. Public Comments.

The DOL published a notice in the *Federal Register* on October 7, 2008, inviting comments about this information collection. 73 Fed. Reg. 58667. The agency received no comments in response to the notice. Regular contacts with employers who request authorizations under this information collection have not resulted in any negative comments regarding this collection.

9. Payment or Gifts to Respondents.

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

10. Assurances of Confidentiality.

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

11. Sensitive Questions.

The DOL asks no sensitive questions in this information collection.

12. Estimated Annual Respondent Burden Hours.

A. Application to Employ Student Learners at Subminimum Wages, Form WH-205

The WHD receives about 700 applications annually, based on the actual applications received for the past three fiscal years. The agency estimates it takes 30 minutes for each respondent to complete the form. This results in an annual reporting burden of 350 hours. 700 forms X 30 minutes.

The FLSA covers all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce by any person. In addition, employees of firms that are not covered enterprises under FLSA may still be subject to the Act if they individually engage in interstate commerce or in the production of goods for interstate commerce.

Accordingly, FLSA covers a wide range of different sizes and types of employers, ranging from a small individually owned retail store to a large manufacturing enterprise with plants in several states. Any one of these employers or a designated employee may choose to complete the application form described in this submission. Without the availability of specific data on employers who complete these forms, the DOL has used the June 2008 average hourly rate for production or nonsupervisory workers on nonfarm payrolls of \$17.96 to determine respondent costs. *The Employment Situation, August 2008*, DOL, Bureau of Labor Statistics, Table B-3, http://www.bls.gov/news.release/archives/empsit_09052008.pdf. The DOL estimates annual respondent costs to be \$6286.00. (350 hours x \$17.96).

B. Application for a Certificate to Employ Learners/Messengers at Subminimum Wages, Form WH-209

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. There are no certificates currently in effect under this program. 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.

C. Application to Employ Apprentices at Subminimum Wages

The DOL estimates 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 BAT regulations preclude approving apprenticeship programs employing apprentices at subminimum rates.

TOTAL ANNUAL BURDEN HOURS—350 HOURS

TOTAL ANNUAL RESPONDENT HOURS BURDEN COSTS—\$6286.00

The DOL bases these estimates on enforcement data and experience.

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

A. Application to Employ Student Learners at Subminimum Wages, Form WH-205

The DOL estimates mailing costs for 700 applications to be \$315.00, based on postage costs of \$0.42 and envelope costs of \$0.03 per submission.
 $700 \times \$0.45 = \315.00 .

B. Application for a Certificate to Employ Learners/Messengers at Subminimum Wages, Form WH-209

No estimated costs.

C. Application to Employ Apprentices at Subminimum Wages

No estimated costs.

TOTAL MAINTENANCE AND OPERATIONS COSTS—\$315.00.

14. Estimated Annual Federal Costs.

All applications are processed in Chicago, Illinois, and the DOL bases federal costs on using the services of a GS-12, Step 4 (pay \$37.46 per hour) employee who analyzes and approves the initial applications for certification. Analysis of each application takes approximately ten minutes.

$700 \text{ applications} \times 10 \text{ minutes} = 117 \text{ hours (rounded)}$.
 $117 \text{ hours} \times \$37.46 = \$4383 \text{ total annual federal costs (rounded)}$.

15. Reasons for Program Changes or Adjustments Affecting Public Burdens.

The DOL has decreased the annual burdens estimate by 229 responses and 115 hours, because the number of applications actually received in recent years has decreased.

16. Publishing Data From Information Collection

The DOL will not publish this information.

17. Display of OMB Approval Expiration.

The DOL does not seek an exemption from displaying the expiration date.

18. Exceptions to Certification Statement.

The DOL does not seek an exception from the certification requirements. This request is in compliance with 5 CFR 1320.9.

B. Employing Statistical Methods:

Not Applicable.