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United States General Accounting Office  
Washington, DC 20548

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April 6, 2001

Mr. Michael F. Ginley  
Director, Office of Enforcement Policy  
Wage and Hour Division  
U.S. Department of Labor

Subject: Suggested Changes to Form WH-226, "Application for Authority to Employ Workers With Disabilities at Special Minimum Wages"

Dear Mr. Ginley:

We are currently reviewing the Department of Labor's administration of the provisions of section 14(c) of the Fair Labor Standards Act (FLSA). These provisions allow individuals with disabilities to be paid at special minimum wage rates that are lower than the federal minimum wage, under certain circumstances. As part of this review, we have examined form WH-226, "Application for Authority to Employ Workers with Disabilities at Special Minimum Wages," as well as a draft revision that we received from the Wage and Hour Division. (The enclosure to this correspondence contains a copy of the draft.)

The changes are intended to help ensure that the form provides Labor with accurate data on employers and workers covered under the provisions of section 14(c) of FLSA.

#### **Data Collected on Employers**

Labor may not be collecting accurate information on the number of employers because information in one of the items on the form is incomplete and may be confusing to employers. Specifically, item 6 on the revised form does not ask employers to list their primary place of business and, as written, implies that work centers are required to obtain a separate 14(c) certificate for their clients who are employed by others at supported employment sites.<sup>1</sup>

Employers are required to obtain 14(c) certificates for their primary place of business and any branch locations at which workers are paid special minimum wages.

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<sup>1</sup>Supported employment sites are work sites operated by regular businesses for which support services, such as job coaches, are provided for workers with disabilities. Some work centers help place their clients at these sites and provide the support services.

Employers are not required to obtain separate 14(c) certificates for workers placed at supported employment sites.<sup>2</sup>

Item 6 of the draft form asks employers to list the names and addresses of all of their branch establishments and supported employment sites and the number of workers employed at these locations. Item 6 does not, however, ask employers to list their primary place of business or the number of workers employed at that location. This may be confusing to employers. Labor is more likely to obtain accurate information on the number of employers and the branch locations for which separate 14(c) certificates are required if employers were asked to list in item 6 only the names and addresses of the locations for which they are required to obtain 14(c) certificates.

### **Data Collected on the Number of Workers**

Labor may not be collecting accurate information on the number of workers with disabilities employed under the provisions of section 14(c) because the time periods specified in two of the items on the form are inconsistent and the instructions may be confusing to employers.

In item 6 on the draft form, employers are asked to list the number of workers at each of their branch locations and supported employment sites, but they are not required to list the number of workers at their primary place of business. Employers are asked to provide this information for all workers they expect to employ (no time period specified) if it is a new application, or for workers employed at one point in time (“during your most recently completed representative fiscal quarter”) if it is an application for renewal. In item 8, however, Labor requests information on the total number of workers paid special minimum wages at all locations during the most recently completed fiscal year.

To improve the clarity and consistency of the information collected on the number of workers employed under the provisions of section 14(c), Labor could eliminate item 8 and rely on item 6 to obtain information on all workers paid special minimum wages. In addition, Labor could ask employers to list the number of workers paid special minimum wages at each of the locations for which they are required to obtain 14(c) certificates at one specific point in time. For example, the item could read

“Enter the number of workers with a disability who, at any time during [some specified time period], were paid special minimum wages for work at your primary place of business and at each of your branch locations.”

The employer could then be asked to total these numbers to make it clear that Labor intended them to report the total number of workers paid special

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<sup>2</sup>If workers placed at supported employment sites are employees of the work center, they are covered under the work center’s primary 14(c) certificate. If the workers are employees of the business that provides the supported employment site, the business, rather than the work center, must obtain a 14(c) certificate in order to pay these workers special minimum wages.

minimum wages at all locations for which they are required to obtain section 14(c) certificates.

Employers submitting new applications could be asked to list in item 6 all of their locations and the number of workers they intended to employ at each location under the provisions of section 14(c). The actual number of workers employed would be obtained from the employers' subsequent applications for renewal.

If you have any questions regarding this report, please contact me at (202) 512-7215 or Revae Moran at (202) 512-3863.

Sincerely yours,

A handwritten signature in cursive script that reads "Sigurd R. Nilsen".

Sigurd R. Nilsen  
Director, Education, Workforce, and  
Income Security Issues

Enclosure

Application for Authority to Employ Workers with Disabilities at Special Minimum Wages

U. S. Department of Labor Employment Standards Administration Wage and Hour Division 230 South Dearborn Street, Room 524 Chicago, Illinois 60604



Note: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. OMB No.: 1215-0005 Expires: 03-31-01

This is an application for the authority to employ workers with disabilities at special minimum wage rates under the Fair Labor Standards Act (FLSA), Walsh-Healey Public Contracts Act (PCA), or McNamara-O'Hara Service Contract Act (SCA). An instruction sheet for completing this form is contained on page 4. Please submit one copy of the completed form, and any attachments, to the address shown above. Retain a completed copy for your records. A certificate may not be granted unless a properly completed application has been received and approved. U.S.C. 201, et seq.

1. This is a request for authority to employ workers with disabilities for:

- A. [ ] Work Experience Center (Work Center) [ ] Hospital/Residential Care Facility (Patient Workers) [ ] Business Establishment (Special Workers) [ ] School Work Experience Program (SWEP)

B. Check One:

- [ ] Initial Application (Complete all items) [ ] Renewal Application (Please make any necessary corrections to reprinted information)

Current Certificate Number: \_\_\_\_\_

2. Name of Employer: \_\_\_\_\_ (Work Experience Center, Hospital/Institution, Business/Private Employer, School)

Street Address: \_\_\_\_\_

Mailing Address (if different than street address): \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Federal Employer Identification Number (EIN): \_\_\_\_\_

Person USDOL Should Contact: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

3. Parent Organization if different from that listed in (2):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Check here if mail is to be sent to parent organization rather than #2. \_\_\_\_\_

4. Status (check one):

- [ ] Public (State or local government) (PU) [ ] Private, For Profit (PP) [ ] Private, Not for Profit (PN) [ ] Other \_\_\_\_\_

5. Primary disability group employed (check one):

- [ ] Mental Retardation (MR) [ ] Alcoholism (AL) [ ] General - No Primary Group (GI) [ ] Mental Illness (MI) [ ] Drug Addictions (DA) [ ] Age Related (AR) [ ] Visual Impairment (VI) [ ] Neuromuscular (NM) [ ] Other (OT) Specify: \_\_\_\_\_ [ ] Hearing Impairment (HI) [ ] Developmental Disability (DD) Specify: \_\_\_\_\_

For USDOL Use Only

Certificate Number: \_\_\_\_\_

Effective Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Expiration Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Print Certificate: Yes No

RO: \_\_\_\_\_ DO: \_\_\_\_\_

Remarks: \_\_\_\_\_

Employees: \_\_\_\_\_

Number of Sites to Receive a Certificate: \_\_\_\_\_

6. List the name and address(es) of all branch establishments (BR), supported employment sites, including enclaves (SE), or school work experience program sites (SWEP) to be covered by this certificate. If you are making an initial application (no previous authority) enter the number of workers expected to be employed in each program. If you are providing renewal information, list the number of workers in the specific program areas who received special minimum wages during your most recently completed representative fiscal quarter.

Attach additional sheets if necessary.

Table with 3 columns: (BR, SE, or SWEP), NAME & ADDRESS OF SITE, NUMBER OF WORKERS. Multiple rows for data entry.

7. Do you manufacture items for the Federal Government under PCA?

Yes No

Do you perform any services for the Federal Government under SCA?

Yes No

Remember to attach copies of all current SCA Wage Determinations for those contracts upon which workers with disabilities are employed and earning special minimum wages.

8. If this is a renewal application, please provide the estimated number of workers with a disability(s) employed during your most recently completed fiscal year (this number should include all workers with disabilities at all locations covered by this certificate who were paid special minimum wages): \_\_\_\_\_  
 Also provide the date your most recently completed fiscal year ended : \_\_\_\_/\_\_\_\_/\_\_\_\_

**WAGE PAYMENT DETERMINATION**

**9. PREVAILING WAGE DETERMINATION**

Please provide the following information on the four largest current contracts whether the workers with disabilities are paid an hourly rate or a piece rate. The prevailing rate should reflect the rate paid to experienced workers who do not have disabilities in the vicinity for work utilizing similar methods and equipment. If more than 3 sources were used, attach an additional sheet headed "Prevailing Wage Determination" and provide the information obtained from these sources (Section 14(c)(2)(B) and Part 525.10).

Description of Work (e.g. collating, hand assembly, janitorial)	Sources (Name of firm and Person Contacted)	Date of Contact	Prevailing Wage Provided by Source	Prevailing Wage Determined by Applicant
	1. _____	_____	\$ _____	
	2. _____	_____	\$ _____	
	3. _____	_____	\$ _____	
	1. _____	_____	\$ _____	
	2. _____	_____	\$ _____	
	3. _____	_____	\$ _____	
	1. _____	_____	\$ _____	
	2. _____	_____	\$ _____	
	3. _____	_____	\$ _____	
	1. _____	_____	\$ _____	
	2. _____	_____	\$ _____	
	3. _____	_____	\$ _____	

**10. HOURLY RATES**

- a. If this is a renewal application, how many workers with disabilities were employed under the terms of this certificate, received special minimum wages, and were paid hourly rates during the fiscal year cited in Block 8 above? (If the answer is 0, go on to question 11): \_\_\_\_\_
- b. How frequently do you rate/evaluate the productivity of each worker with a disability who is paid a special minimum wage? \_\_\_\_\_
- c. Attach to this application productivity rating/evaluation forms for three currently employed workers with disabilities who are paid hourly rates (if you employ workers with disabilities at special minimum wages on an SCA contract, one of the three employees for which data is submitted must pertain to an SCA service employee). Include all material relating to the evaluation which shows the worker's individual productivity in proportion to the wage and productivity of an experienced worker, who does not have disabilities, performing essentially the same type, quality and quantity of work in the vicinity.

**11. PIECE RATES**

- a. If this is a renewal application, how many workers with disabilities were employed under the terms of this certificate, received special minimum wages, and were paid piece rates during the fiscal year cited in Block 8 above? (If the answer is 0, go on to question 12): \_\_\_\_\_
- b. Please provide the following information about the four largest current contracts on which workers with disabilities earning special minimum wages are paid piece rates and attach supporting time studies of work measurements.

Description of Work (e.g. packaging, shrink wrapping, labeling)	Prevailing Wage Determined for this Job (Expressed in a Rate per Hour)	Standard Productivity (Units/Hour)	Piece Rate Paid to Workers (Rate Per Unit)

**12. TEMPORARY AUTHORITY:** To be completed only by a vocational rehabilitation program administered by a State agency or the U.S. Veterans Administration.

Check if this is a request for temporary authority to employ workers with disabilities at special minimum wages pursuant to a vocational rehabilitation program of the Veterans Administration for veterans with a service-incurred disability or a vocational rehabilitation program administered by a State agency. A copy of the signed application will constitute the temporary authority provided the application is mailed to the Department of Labor at the address listed at the top of page 1 of this form within ten days of the signing. Temporary authority will exist for 90 days from the date the application is signed and cannot be extended or renewed by the issuing agency (See Regulations 29 CFR Part 525.8 and instructions of page 4).

**13. REPRESENTATIONS AND WRITTEN ASSURANCES**

I certify that I have read this form and to the best of my knowledge and belief, all answers and information given in the application and attachments are true; that the representations set forth in support of this application to obtain or continue the authorization to pay workers with disabilities at subminimum wage rates are true; and that the authorization, if issued or continued, is subject to revocation in accordance with the provisions of 29 CFR 525.

I represent that as set forth in the regulations governing the employment of workers with disabilities, the following conditions exist (or will exist for initial applicants):

- (1) workers employed (or who will be employed) under the authority in 29 CFR 525 have disabilities for the work to be performed;
- (2) wage rates paid (or which will be paid) to workers with disabilities under the authority in 29 CFR 525 are commensurate with those paid experienced workers, who do not have disabilities, in industry in the vicinity for essentially the same type, quality, and quantity of work;
- (3) the operations are (or will be) in compliance with the FLSA, PCA, SCA, and Contract Work Hours and Safety Standards Act (CWHSSA), an overtime statute for federal contract work;
- (4) no deductions will be made from the commensurate wages earned by a patient worker to cover the cost of room, board or other services provided by the facility;
- (5) records required under 29 CFR 525 with respect to documentation of disability, productivity, time studies or work measurements, and prevailing wage surveys will be maintained.

Further, I certify that:

- (1) the wage rates of all hourly-rated employees paid in accordance with section 14(c) of the FLSA will be reviewed at least every six months; and
- (2) wages paid to all employees under FLSA section 14(c) will be adjusted at periodic intervals, at least once a year, to reflect changes in the prevailing wage paid to experienced workers, who do not have disabilities, employed in the vicinity for essentially the same type of work.

**14. SIGNATURE OF AUTHORIZED REPRESENTATIVE**

Name (Print or Type) \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Public Burden Statement**

We estimate that it will take an average of 45 minutes per response to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the U. S. Department of Labor, Administrator, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C., 20210 (please do not send the completed application to this address).

INSTRUCTION SHEET

GENERAL INSTRUCTIONS

1. This application is to be used to apply for a subminimum wage certificate under the Fair Labor Standards Act (FLSA), the Walsh-Healey Public Contracts Act (PCA), and the McNamara-O'Hara Service Contract Act (SCA). Payment of subminimum wages to workers with disabilities is authorized only under certificates issued under section 14(c) of the FLSA. State Agencies and the Veterans Administration may also request immediate temporary certificate authority by completing this application.
2. This application process is authorized by section 14(c) of the FLSA. While completion of this form is voluntary, authority to pay less than the applicable minimum wage will not be granted unless a properly completed application is submitted.
3. Complete one copy of this form and send it to the following address: U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 230 South Dearborn Street, Room 524, Chicago, Illinois, 60604. Keep a copy of the application for your records.
4. Do not submit an application for each branch establishment, supported employment work site (including enclaves), or school work experience site. Instead, report these in the spaces provided in item 6 and **complete and submit a separate form WH-226A for each site where workers with disabilities are (will be) employed at special minimum wages.**

A **branch establishment** is a physically separate establishment of the same enterprise. A **supported employment work site** is a location, outside of the work center or rehabilitation center, often on the premises of an enterprise separate from the work center or rehabilitation center, where workers with disabilities paid special minimum wages are placed in employment settings along with center staff (job coaches). An **enclave** is a supported employment work site where a group of workers with disabilities are working and supervised by staff from the work center. A **school work experience program (SWEP)** site is a workplace in the community in which a school system has placed a student(s) with disabilities to work in a job at special minimum wages.

WH policy and procedures require that each branch establishment and school work experience program site have its own certificate authorizing the payment of special minimum wages. The authority to pay special minimum wages to workers with disabilities at supported employment sites, including enclaves, however, stems from the certificate issued to the supervising work center.

SPECIAL INSTRUCTIONS FOR SCHOOL WORK EXPERIENCE PROGRAMS (SWEPS):

The rehabilitation counselor or coordinating official of the school may submit a group application covering all of the students with disabilities and all of the employers participating in a school work experience program. Employers are responsible for compliance with all applicable child labor laws, minimum wage standards, certificate and recordkeeping requirements. The students participating in a school work experience program must be paid commensurate wage rates based upon the students' productivity in proportion to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity in which the students are employed. Complete all items except 12.

- Item 1(A) Check "School Work Experience Program"
- Item 2 Enter identifying information for school
- Item 3 Enter School District information
- Item 4 Check "Other" and enter "SWEP"
- Items 9 and 11 Complete for the four types of work in which the greatest number of students with disabilities are employed at special minimum wages. If fewer than four types of jobs exist, enter "n/a" in the "Description of Work" blocks which are not used.
- Item 14 Must be signed by the counselor or coordinating official of the school

SPECIAL INSTRUCTIONS FOR VOCATIONAL REHABILITATION COUNSELORS OR VETERANS ADMINISTRATION TRAINING OFFICERS REQUESTING IMMEDIATE TEMPORARY CERTIFICATION TO PAY SPECIAL MINIMUM WAGES:

Complete all items of this application.

- Item 1(A) Check "Business Establishments (Special Worker)"
- Item 2 Enter name and location of employer where workers with disabilities are to be placed
- Item 3 Enter the name and address of the Veterans Administration Office or State Vocational Rehabilitation agency which is seeking temporary authority
- Item 4 Check "Other" and enter the type of business in which the worker with a disability is being placed
- Items 9 and 11 Complete for the work sites where the workers with disabilities will be employed at special minimum wages
- Item 12 Check
- Item 14 Must be signed by the Vocational Rehabilitation Counselor or Veterans Administration Training Officer

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