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Robert E. Maher, Jr.,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8-22995 Filed 9-30-08; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. 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. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Partial Overtime Exemption for Remedial Education (29 U.S.C. 207(q) and 29 CFR 516.34). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 1, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, E-mail bell.hazel@dol.gov. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.*, sets the federal minimum wage,

overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206, 207, 211, and 212. FLSA requirements apply to employers and employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; the FLSA contains exemptions that apply to employees in certain types of employment. *See* 29 U.S.C. 213, *et al.*

The FLSA generally requires employers to pay overtime hours worked by covered employees at time and one-half the employee's regular rate of pay. *See* 29 U.S.C. 207(a)(1); 29 CFR 778. FLSA section 7(q) provides a partial overtime exemption that allows an employer to employ any employee who lacks a high school diploma or whose reading level or basic skills is at, or below, the eighth grade level for up to ten overtime hours per week without paying the usually required half-time premium, if the employee is receiving remedial education during such overtime hours. 29 U.S.C. 207(q); *See also* 29 CFR 778.603. The employer-provided remedial education must be designed to provide up to eighth grade level basic skills or to fulfill the requirements for a high school diploma or General Educational Development (GED) certificate and may not include job-specific training. 29 U.S.C. 207(q); 29 CFR 778.603. The employer must also compensate for time spent in such remedial education at no less than the employee's regular rate of pay. 29 U.S.C. 207(a), (q); 29 CFR 778.603. Regulations, 29 CFR 516, Records to be Kept by Employers, contains the basic recordkeeping requirements for employers of employees subject to FLSA protections. In addition to the basic recordkeeping requirements, employers using this partial overtime exemption must indicate the hours an employee engages in exempt remedial education each workday and total hours each work week. 29 CFR 516.34, 778.603. The employer may either state the hours separately or make a notation on the payroll. 29 CFR 516.34, and 778.603. The subject information collection relates only to the section 516.34 requirements. This information collection is currently approved for use through April 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- 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;

- 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;
- Enhance the quality, utility and clarity of the information to be collected; and

- 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 DOL seeks approval for the extension of this currently approved information collection in order to carry out its responsibility to review and determine employer compliance with the applicable section of the FLSA. These recordkeeping requirements for employers utilizing the partial overtime exemption for remedial education are necessary to ensure employees are paid in compliance with the FLSA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Partial Overtime Exemption for Remedial Education.

OMB Number: 1215-0175.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Type of Response: Recordkeeping.

Total Respondents: 15,000.

Total Annual Responses: 30,000.

Estimated Total Burden Hours: 5,000.

Estimated Time per Response: 1 minute per week for 10 weeks (10 minutes per year).

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 25, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8-22935 Filed 9-30-08; 8:45 am]

BILLING CODE 4510-27-P