

SUPPORTING STATEMENT
APPLICATION FOR A FARM LABOR CONTRACTOR OR FARM LABOR
CONTRACTOR EMPLOYEE CERTIFICATE OF REGISTRATION
FORM WH-530
29 C.F.R. PART 500, SUBPART B
OMB CONTROL No. 1215-0037

A. Justification

1. Circumstances Necessitating Information Collection

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that no person shall engage in any farm labor contracting activity for any money or valuable consideration paid or promised to be paid, unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities such person is authorized to perform. *See* 29 U.S.C. §§ 1802(7), 1811(a); 29 C.F.R. §§ 500.1(c), -.20(i), -.40. The named MSPA contracting activities include recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker and, with respect to migrant agricultural workers, providing housing. 29 U.S.C. § 1802(6); 29 C.F.R. § 500.20(j). The MSPA also provides that a Farm Labor Contractor (FLC) shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration as a FLC or a certificate of registration as a Farm Labor Contractor Employee (FLCE) of the FLC that authorizes the activity for which such individual is hired, employed or used. 29 U.S.C. § 1811(b); 29 C.F.R. §§ 500.1(c).

The MSPA provides that, after appropriate investigation and review, the Secretary shall issue a FLC certificate of registration (including a certificate of registration as a FLCE) to any person who has filed with the Secretary a written application containing the following:

- A. a declaration subscribed and sworn to by the applicant stating the applicant's permanent place of residence, the farm labor contracting activities for which the certificate is requested, and such other relevant information as the Secretary may require;
- B. a statement identifying each vehicle to be used to transport any migrant or seasonal agricultural worker and, if the vehicle is or will be owned or controlled by the applicant, documentation showing that the applicant is in compliance with MSPA safety, insurance, and operator licensing requirements for each such vehicle;
- C. a statement identifying each facility or real property to be used to house any migrant agricultural worker and, if the facility or real property is or will be

controlled by the applicant, documentation showing that the applicant is in compliance with MSPA safety and health requirements for each such facility or real property;

D. a set of the applicant's fingerprints;

E. a declaration, subscribed and sworn to by the applicant, consenting to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant if the applicant has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

29 U.S.C. § 1812; 29 C.F.R. § 500.45.

Regulations 29 C.F.R. §§ 500.40 and 500.44-.47 set forth the standards that must be met in the application process to obtain a certificate. Regulations §§ 500.1(i)(1), -.44 provide for the information collection used to obtain a certificate of registration. Use of Form WH-530 enables an applicant to provide all the information the Department of Labor (DOL) will need to determine whether to authorize the farm labor contracting activities an applicant is seeking authorization to perform under the MSPA.

The DOL seeks to make several substantive revisions to Form WH-530. Specifically, the DOL proposes to:

Revise Item 1 to drop the check box referring to an application for consolidated Federal-State certificates, because the reference has actually increased burden and expectations that could lead to non-compliance with the substantive State registration requirements. No combined certificates were ever issued. Only Florida ever used the Federal Form WH-530 in its registration process; however, Florida issued its own registration certificate and does not recognize the Federal FLC/ FLCE Certificate of Registration for State purposes. Florida or other States that require FLCs or FLCEs to register may use Form WH-530, if the form meets their needs. The DOL proposes to have separate check boxes for FLC and FLCE applicants to identify whether they are seeking an initial, renewal or amended certificate.

Reduce chances of identity theft by replacing the Item 2 requirement for an applicant's full Social Security Number with collecting only the last six digits.

Clarify Item 5 by obtaining information on for whom persons seeking authorization to drive migrant and seasonal agricultural workers will provide transportation services. Transportation authorization requires certificate authorization in order to ensure the specific vehicles used meet the minimum safety requirements. This information will help the DOL to issue driving authorization only in those cases where s FLC has authorization to transport workers.

Drop the “pay” check box in Item 8, since paying migrant or agricultural workers does not require a FLC/FLCE certificate of registration.

Obtain information in Item 9 on whether the FLC applicant intends to employ persons who have H-2A or H-2B visas. This information will assist the DOL in carrying out its responsibilities under these guest worker programs.

Request the date the applicant signed various attestations on the application.

In addition, the DOL also intends to provide enhanced information to clarify the agency’s specific authority to conduct the information collection and the consequences for non-compliance. The DOL also intends to make minor editorial changes, such as adding page numbers to the application, to assist applicants in providing complete packages.

2. Use

Form WH-530 provides the means for an applicant to meet the statutory MSPA requirement to file a written application with the Secretary containing certain specified information regarding prospective farm labor contracting activities. Applicants use Form WH-530 to obtain authorization to engage in the named MSPA farm labor contracting activities or to obtain authorization to be hired, employed, or used by a currently registered FLC to perform these activities. Applicants complete the form when seeking an initial, renewed, or amended certificate and submit it to either the Wage and Hour Division (WHD) of the DOL or a State Workforce Service. *See* 29 C.F.R. §§ 500.44, -47. Local WHD and State Workforce Offices forward completed applications forms to the appropriate WHD office where they are reviewed and appropriate action (issuance or denial) is taken. *See Id.* § 500.48. All initial certificates are issued for a period of 12 months from the date of issuance unless earlier suspended or revoked. *Id.* § 500.50(a) (1). Renewal certificates may be issued for a period of up to 24 months, if the applicant has not been cited for a MSPA violation (or its attendant regulations) within the preceding five years from the expiration date shown on their current certificate. *Id.* § 500.50(b)(2)-(3).

3. Technology

There is no improved technology available to provide the information required to obtain authorization to perform farm labor contracting activities; however, submission of a photocopy of the application form is sufficient to satisfy the regulatory requirements, so long as it contains an original signature in the appropriate places. Pursuant to the Government Paperwork Elimination Act (GPEA), DOL has posted Form WH-530 in a fillable format on the WHD Web site for downloading and printing. <http://www.dol.gov/esa/whd/forms/wh530.pdf>. Electronic submission is not practicable

for this information collection, as processing takes place at various locations with no centralized clearinghouse for forms submission and processing the forms cannot begin until the agency receives the required set of the applicant's fingerprints, along with any additional required documentation regarding transporting, driving, or housing activities.

4. Duplication

This program is unique to the WHD, and does not duplicate other information collection requirements. Similar 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. Although this information collection does involve small farm labor contracting businesses engaged in agriculture, Form WH-530 provides the means by which an applicant can provide the information to the WHD needed to obtain a certificate to perform farm labor contracting activities under the MSPA.

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

In order to engage in farm labor contracting activities, the MSPA requires that a FLC or FLCE be registered with the DOL and carry the certificate of registration. An applicant files Form WH-530 with the WHD to obtain the certificate. With the exception of collecting whether the FLC applicant intends to employ persons who have H-2A or H-2B visas, the WHD needs all information requested to determine whether an applicant meets MSPA requirements to obtain a FLC or FLCE registration. Collecting information less frequently than at times of initial registration, renewal, or amendment of a certificate would also prevent the WHD from determining whether to issue or deny a certificate authorizing the applicant as a FLC or FLCE. Collecting whether the FLC applicant intends to employ persons who have H-2A or H-2B visas will assist the DOL in carrying out its responsibilities under these guest worker programs. Employers of H-2A and H-2B workers must meet enhanced compliance requirements as a condition of obtaining the workers. The MSPA requires compliance with some of the enhanced requirements.

7. Special Circumstances

There are no special circumstances required in the conduct of this information collection.

8. Public Comments

Contacts with applicants through the registration process have not indicated any substantive problems with providing the information requested on the form. The DOL published a *Federal Register* Notice on January 23, 2009, that invited public comments about this information collection. 74 Fed. Reg. 4236. The DOL received no comments

in response to the Notice.

9. Payment or Gifts to Respondents

The DOL offers no payments or gifts to respondents.

10. Assurances of Confidentiality

The DOL makes no assurances of confidentiality to respondents. As a practical matter, the DOL would only disclose information collected 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. There is a privacy statement on the form.

11. Sensitive Questions

The DOL proposes to alter Form WH-530 to collect only the last six digits of the applicant's Social Security Number, in order to protect the personal privacy of applicants. The remaining digits are used in issuing the Registration Certificate Number and are needed to allow the agency to identify applicants. The DOL needs to be able to identify the applicant specifically and to assist application reviewers and investigators in ensuring the applicant and registration submitter or holder are the same person.

12. Estimated Annual Respondent Burden Hours

The DOL bases the following estimates on agency experience with the program and a form completion trial conducted by WHD staff. The DOL estimates annually 10,611 respondents complete Form WH-530, based on the average number of persons issued FLC and FLCE certificates in fiscal years 2006-2008. The DOL also estimates it takes an average of 30 minutes to complete each form. This produces an annual burden of 5306 hours (rounded). 10,611 forms x 30 minutes.

The DOL has used the May 2006, national median hourly wage rate for FLCs of \$11.32 to estimate the value of respondent's time. See DOL, Bureau of Labor Statistics (BLS), Occupational Employment Statistics Survey, <http://www.bls.gov/oes/2006/may/oes451012.htm> . The DOL estimates annual respondent times costs to be \$ 60,064 (rounded). 5306 hours x \$11.32.

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

DOL estimates applicants submit 95 percent of completed applications by mail, for total annual respondent costs of \$4536 (rounded). 10,611 applications x .95 x (\$0.42 postage + \$0.03 per envelope).

14. Estimated Annual Federal Costs

The annualized federal cost involves printing, mailing, and processing the forms. WHD field offices and State Workforce Agency offices maintain the forms for distribution. Approximately 10,611 applicants annually file Form WH-530. The WHD processes applications in several locations throughout the country, and the DOL has used the 2008 Rest of United States salary table to estimate salary expenses.
http://www.opm.gov/oca/08tables/html/RUS_h.asp.

Printing: 10,611 forms x \$.03 per form =	\$318 (rounded)
Postage: 10,611 forms x (\$.42 postage + \$.03 per envelope) =	\$4775 (rounded)
GS-5, Step 4 mail clerk to mail forms: 10,611 forms x 5 minutes per form x \$ 15.67 per hour =	\$13,856 (rounded)
GS-7, Step 4 clerk to review completed forms: 10,611 forms x 15 minutes per form x \$19.41 per hour =	\$51,490 (rounded)
TOTAL ANNUAL FEDERAL COST =	\$70,439

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

The burden changes in this submission reflect increases in the actual number of respondents during in Fiscal Years (FYs) 2006-2008 (when compared to FYs 2003-2005), the current FLC median national wage rate, an increase in the applications submitted by mail, and mailing costs.

16. Publishing Data From Information Collection

The DOL does not publish the results of this information collection.

17. Display of OMB Approval Expiration

The DOL does not seek an exception to the requirement to display the expiration date on this information collection.

18. Exceptions to Certification Statement

The DOL is not requesting an exception to any of the certification requirements for this information collection. This request complies with 5 C.F.R. § 1320.9.

B. Employing Statistical Methods

Not applicable.