

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
MOTOR VEHICLE SAFETY FOR TRANSPORTATION OF MIGRANT AND SEASONAL
AGRICULTURAL WORKERS
REGULATIONS 29 C.F.R. § 500.45(b), FORMS WH-514 AND WH-514a AND
REGULATIONS 29 C.F.R. § 500.105(1)(H)-(I), FORM WH-515
OMB CONTROL No. 1235-0016
(Combining 1235-0017 and 1235-0016)

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.

In an effort to expedite the certification service being provided to the farm labor contractor community, the DOL seeks to make several substantive revisions to Form WH-530. Specifically, the following changes are proposed:

Form WH-530

In Item 1 request the applicant to provide the prior certificate number, if the application is a renewal. This information will increase the efficiency with which forms are processed.

In Item 2 additional question to make a distinction between "Person Completing Application," and the "Name to Appear on Certificate". The addition of this question will provide clarity as to who is seeking an FLC/FLCE certificate of registration as many farm labor contractors are assisted in the filing process.

In Item 3 addition of item "(c)" "Visa No." or "Temporary Worker Visa No." and addition of another line for "expiration date". Not all FLC/FLCE applicants are either a U.S. citizen or a legal alien resident. There are also individuals who are in this country on work visas who are in need of registration as FLCEs. In addition, addition of two identification questions "weight" and "color of hair" to the already existing questions of "Height", "Color of Eyes", "Sex" and "Date of Birth" for identification purposes.

In Item 5 addition of the header "Driving Authorization:" For ease of typing in the information on the WH-515, addition of a line for "Doctor's Certificate Expiration Date" and "Doctor's Certificate is attached" with yes/no boxes. Addition of the phrase "A valid Doctor's Certificate must be submitted every three years." as a reminder.

In the second to last line, change “will transport workers for” to “will drive workers for”

Instructions for Item 5:

Revise the instructions to also allow for the submission of unexpired, properly completed Department of Transportation doctor certification forms such as the DOT Medical Examiner’s Certificate or the DOT Form 649-F *Medical Examination Report for Commercial Driver Fitness Determination*.

In Item 7 addition of the question “If a corporation, Give Legal Name” and add “(and doing business as)”. Below the line “Name of Applicant”, add another line for “Name of Representative for Purposes of this Application”.

In Item 9 Separate the question regarding H-2A and H-2B workers into two separate questions:

“Indicate whether you employ or intend to employ H-2A visa workers.”

“Indicate whether you employ or intend to employ H-2B visa workers.”

Each followed by a yes/no box and “(If yes, how many ___)”.

An employer could have H-2A or H-2B workers, or both. Separating the question will facilitate tracking the information.

In Item 10 Revise the question to read, “Will you be directly transporting workers or engaging others to provide transportation?” and adding “(Submit proof of compliance with the insurance or financial responsibility requirements.)” to be completed by those who answer in the affirmative. MSPA requires that each vehicle used to transport migrant or seasonal workers be insured at specified levels.

Different standards apply to the inspection requirement depending on the nature of the transportation being carried out. Below the current yes and no boxes for the first question, add “Will any single trip be more than 75 miles round-trip?” and then add yes/ no boxes.

- o For yes, add “(Submit a properly completed WH-514 *Vehicle Mechanical Inspection Report*.)”
- o For no, add “(Submit a properly completed WH-514a *Vehicle Mechanical Inspection Report*.)”

At the bottom, add “Note that workers’ compensation provides specific coverage and may not cover out-of-state travel or non-work-related travel. Also note that if transportation authorization is issued based on a workers’ compensation insurance policy provided by a specific employer, the insurance coverage is limited to such times as the applicant is actually working for that employer.”

Instructions for “Submission of Application” on page 6:

For the first address (San Francisco), change “National Certificate Team” to “Western Farm Labor Certificate Processing”.

The general language for the introduction to the second address will be retained, the addition of “one of the following two addresses” to the end of the instructions for sending correspondence to Atlanta, GA.

Send first class mail, certified mail, and USPS Express Mail to:

U.S. Department of Labor
Wage Hour Division
Southeast Farm Labor Certificate Processing
P O Box 56447
Atlanta, GA 30343-0447

Send all other ground and express courier services to:

U.S. Department of Labor
Wage Hour Division
Southeast Farm Labor Certificate Processing
233 Peachtree Street NE, Suite 610
Atlanta, GA 30303

Forms WH-514 and WH-514a

Add “This inspection must be performed by an independent inspection company not affiliated with the applicant.” Add authorized inspection number and expiration date.

DOL is proposing to merge the information collections cleared under OMB Control Numbers 1235-0017 (WH-514, WH-514a & WH-515) into Control Number 1235-0016 (WH-530). The agency will submit a request to discontinue Control Number 1235-0017 upon OMB approval of this information collection request.

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 Agency Office. *See* 29 C.F.R. §§ 500.44, -.47. Local WHD and State Workforce Agency 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).

The WHD has created Forms WH-514, WH-514a, and WH-515, which allow FLC applicants to verify to the WHD that the vehicles used to transport migrant/seasonal agricultural workers meet the MSPA vehicle safety standards and that anyone who drives such workers meets the Act's minimum physical requirements. The WHD uses the information in deciding whether to authorize the FLC/FLCE applicant to transport/drive any migrant/seasonal agricultural workers or to cause such transportation. The WH-514, WH-514A (vehicle inspection form) is valid for one year and the WH-515 (doctor's certificate) is valid for three years.

Vehicle Standards

When the adopted DOT rules apply, FLC applicants use Form WH-514 to verify that any vehicle used or caused to be used to transport any migrant/seasonal agricultural worker(s) meets the DOT safety standards. When the adopted DOT rules do not apply, FLC applicants seeking authorization to transport any migrant/seasonal agricultural workers use Form WH-514a to verify that that the vehicles meet DOL safety standards. Upon the vehicle meeting the required safety standards, the form is completed. The FLC applicant then submits the original form to a WHD office. The forms ask for information identifying the carrier, vehicle, inspection station, and inspector. The forms allow for the use of check marks to identify the applicable safety standards met by each vehicle. The FLC applicant need merely identify the State where the inspection was performed, list the appropriate State vehicle safety inspection number and license tag number, and then sign and date the form if (s)he possesses a valid current State vehicle safety inspection sticker from the jurisdiction in which the vehicle is registered. In order to assist the WHD in better determining the adequacy of the vehicle insurance, Forms WH-514 and WH-514a request the "seating capacity" of the vehicles.

Driver Standards

Form WH-515 is a doctor's certificate used to document that a motor vehicle driver or operator meets the minimum DOT physical requirements that the DOL has adopted. Regulations 29 C.F.R. § 500.105(b)(1)(I) specifies the wording of the certification. In accordance with the regulatory provisions, Form WH-515 identifies the driver, whether the driver qualifies under the DOT regulations (with or without glasses), date and place of the examination, as well as the address and signature of both the physician and driver. Drivers must have a copy available whenever they transport workers; and the driver's employer must retain a copy of the form at their primary place of business. A properly completed Form WH-515 remains valid for 36 months. *See* 29 C.F.R. 500.105(b)(1)(G). Form WH-515 requires respondents merely to identify themselves and check a box as to whether the applicant meets the applicable standards; thus, the form, itself, creates no burden. The regulations do create a recordkeeping burden, as the applicant must maintain it.

3. Technology

WH-530:

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/whd/forms/wh530.pdf>.

WH-514, WH-514A & WH-515:

In accordance with the Government Paperwork Elimination Act (GPEA), the WHD has posted these forms on the Internet in a PDF, fillable format:

Form WH-514 <http://www.dol.gov/whd/forms/wh514.pdf>

Form WH-514a, <http://www.dol.gov/whd/forms/wh514a.pdf>

Form WH-515, <http://www.dol.gov/whd/forms/wh515.pdf>

The agency has determined that it is not practical to provide an electronic submission option for these information collections, as processing takes place in multiple locations around the country with no centralized clearinghouse for forms. In addition, the agency cannot begin processing the forms until it receives a set of the applicant's fingerprints, when required, along with any additional required documentation regarding transporting, driving, or housing activities. Form WH-515 also requires signatures from both the doctor and driver. The multiple signatures create an additional obstacle for an electronic submission option.

4. Duplication

The Farm Labor Contractor registration program is unique to the WHD, and does not duplicate other information collection requirements. Similar information is not available from any other source.

With respect to worker transportation, while the DOT and some states require similar vehicle safety inspections and doctor's examinations, they do not register FLC/FLCEs or require submissions about the inspections or examinations; consequently, this information is not available from any other source.

5. Minimizing Small Entity Burden

WH-530:

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.

WH-514, WH-514A & WH-515:

The DOL has reduced respondent burden where possible. For example, the DOL forms allow for the use of checking boxes to the maximum extent possible. The WHD also accepts a FLC's statement documenting that a vehicle has passed a State inspection to satisfy the MSPA regulatory requirements – as opposed to requiring individual notations of each vehicle part inspected – to minimize the amount of time needed to complete Forms WH-514 and WH-514a. The FLC statement does provide enough information to allow the WHD to verify the claim, when that is warranted.

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

WH-530:

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 employs or 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 employs or 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.

WH-514, WH-514A & WH-530:

In order to transport migrant and seasonal agricultural workers, the MSPA requires that all vehicles used to transport migrant and seasonal workers conform to certain safety standards. Moreover, the MSPA requires those who drive migrant/seasonal agricultural workers to verify that they are physically fit to do so. The DOL requires this information only from FLC and FLCE applicants seeking authorization to transport/drive any migrant/seasonal agricultural worker(s) or cause such transportation; thus, they typically only need to provide the information with their WH-530 submission. The WHD would have no way to determine if a vehicle or driver met the MSPA safety requirements, in order for the agency to authorize FLCs and FLCEs to drive migrant/seasonal agricultural workers or cause such transportation, were the agency not to collect this information or collect it less frequently. In accordance with Regulations 29 C.F.R. § 500.7, DOL staff may also examine copies of these forms during MSPA investigations.

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 02/29/2012, that invited public comments about this information collection. 77 Fed. Reg. 12330. The comment period was open for 60 days; however, no comments were received.

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. While we do strive to maintain confidentiality whenever possible, we do publish lists of eligible and ineligible farm labor contractors as part of our enforcement efforts.

11. Sensitive Questions

WH-530:

The DOL collects only the last six digits of the applicant's Social Security Number, in order to protect the personal privacy of applicants. The last six 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.

WH-514, WH-514A & WH-515:

The DOL asks no sensitive questions in this information collection. Form WH-515 requests only an affirmation that the driver meets the health standards (with an option that driver meets the standards only when wearing glasses). When a FLC or FLCE applicant does not meet the qualifications, the information collection does not ask the physician to identify any reason(s) for the determination. Form WH-515 informs respondents that the WHD needs this information to determine if a FLC/FLCE applicant seeking authorization to drive meets the DOT requirements that the DOL has adopted.

**12. Estimated Annual Respondent Burden Hours
General**

The DOL has used the May 2011, national median hourly wage rate for FLCs of \$14.02 to estimate the value of respondent's time. See DOL, Bureau of Labor Statistics (BLS), Occupational Employment Statistics Survey, <http://www.bls.gov/oes/current/oes131074.htm>

A Forms WH-514 and WH-514a

The DOL has used enforcement experience and the actual submissions of Forms WH-514, WH-514a, and WH-515 during FY 2011 in developing the following estimates.

The DOL estimates 879 respondents annually complete approximately 4,003 Forms WH-514/WH-514a. The DOL further estimates that it takes approximately 5 minutes to complete and file each response, for an annual burden of 334 hours.

4003 responses X 5 minutes = **334 burden hours**.

334 burden hours X \$14.02 = **\$4,683** (rounded)

B Form WH-515

The DOL estimates it receives 2,110 Forms WH-515 from an equal number of respondents who would not otherwise get a doctor's certificate under the DOT requirements. The agency also estimates that it takes approximately 5 minutes to file each form, for an annual burden of **176 hours**. 2,110 responses x 20 minutes = **703 hours** (time to obtain physical examination by physician). The DOL also estimates it takes one minute to place Form WH-515 in an accessible location. 2110 responses X 1 minute = **35 hours** for recordkeeping.

2,110 respondents X 26 minutes = 914 burden hours

914 burden hours X \$14.02 (FLC's hourly rate) = **\$12,814** (rounded)

C Form WH-530

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 15,026 respondents complete Form WH-530, based on the average number of persons issued FLC and FLCE certificates in fiscal years 2010-2011. The DOL also estimates it takes an average of 30 minutes to complete each form. This produces an annual burden of

15,026 respondents X 30 minutes = 7,513 hours.

7,513 burden hours X \$14.02 (FLC's hourly rate) = **\$105,332** (rounded)

D Total Hour Burden Costs

334 burden hours for form WH-514 + **914 burden hours** for form WH-515 + **7,513 burden hours** for form WH-530 = **8,761 total burden hours** X \$14.02 = **\$122,829** (rounded)

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

General

Respondents submit Forms WH-514, WH-514a, and WH-515 to supplement their Form WH-530 (the FLC/FLCE registration application). OMB Control Number 1235-0016 applies to Form WH-530, and this information collection does not duplicate costs associated with filing Form WH-530 (e.g., mailing). The DOL associates no capitol or start-up costs with this information collection; however, the agency estimates the following respondent costs for maintenance and operation and the purchase of services related to this collection.

A Forms WH-514 and WH-514a

This information collection supports an underlying substantive requirement that those who transport any migrant/seasonal agricultural worker(s) do so in vehicles that meet the applicable safety standards; consequently, FLCs have mechanics sign Forms WH-514 or WH-514a to verify the information. The DOL estimates average mechanic costs associated with completion of each Form WH-514/WH-514a to be \$39, for a total operation and maintenance cost of \$156,117 (rounded). 4003 annual responses x \$39 = **\$156,117**.

B Forms WH-515

This information collection supports an underlying substantive requirement that those who drive any migrant/seasonal agricultural worker(s) meet the applicable health standards; consequently, respondents take Form WH-515 to their physicians, who mark appropriate the box and sign Form WH-515 to verify the information. The DOL estimates average physician costs associated with completion of each Form WH-515 to be \$69. Total operation and maintenance cost is equal to 2110 annual responses x \$69 = **\$145,590**.

C Form WH-530

Many applicants submit their forms using receipt services, and a figure of \$3.60 per application will be used per applicant. The cost of sending a 9"X12" envelope with 10 pages is used for the approximate weight of an application packet. The cost of sending such a packet from DC to Atlanta using 1st class mail is \$1.30 (in February 2012). The cost of sending such a packet with electronic receipt is \$5.90. Estimating that approximately 50% of the farm labor contractors will use regular 1st class mail and 50% will use electronic receipt, therefore \$3.60 is the average cost DOL estimates applicants will incur. With rare exception, completed applications are submitted by mail, for total annual respondent costs of \$54,544 (rounded). 15,026 applications x \$3.63 (\$3.60 postage + \$0.03 per envelope) = **\$54,544**.

D. Total Associated Costs

\$156,117 (Forms WH-514/514a) + \$145,590 (Form WH-515) + \$54,544 = **\$356,251**

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 4,003 WH-514s, 2,110 WH-515s and 15,026 WH-530s are filed annually for a total of 21,139 forms filed. DOL estimates that about 10 percent of those forms are produced

and distributed by WHD. The WHD processes applications in several locations throughout the country, and the DOL has averaged the 2011 Atlanta, GA and San Jose/San Francisco/Oakland salary levels to estimate expenses. http://www.opm.gov/oca/11tables/html/atl_h.asp
http://www.opm.gov/oca/11tables/html/sf_h.asp

Printing: 21,139 forms X 10% X \$.03 per form = \$63 (rounded)

Postage: 21,139 forms X 10% X (\$.45 postage + \$.03 per envelope) = \$1,015 (rounded)

GS-5, Step 4 mail clerk to mail forms:

21,139 forms x 5 minutes per form X 10% \$18.40 per hour = \$3,238 (rounded)

GS-7, Step 4 clerk to review completed forms:

15,334 forms x 15 minutes per form x \$24.21 per hour = \$ 92,809 (rounded)

TOTAL ANNUAL FEDERAL COST = \$97,125 (rounded)

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 Fiscal Years (FYs) 2010-2011 (when compared to FYs 2007-2009), the current FLC median national wage rate, an increase in the applications submitted by mail, and mailing costs.

DOL has no significant program changes or adjustments affecting public burdens to report. The changes in the various burdens of FLC forms on the regulated public reflected above arise out of a closer look into the step-by step processing; the way in which FLCs/FLCEs obtain their licenses has been dramatically affected by the availability of forms online. WHD has also reconsidered whether the time it takes a respondent to obtain a medical certification is a substantive requirement that operates independently of the information collection, and is now claiming burden for that time. The processing centers in Atlanta and San Francisco were able to provide information that enabled a more accurate estimated accounting of public burden. The combining of Control Numbers 1235-001 and 1235-0016 does not affect overall public burden.

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.