

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

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;

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- 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.

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.

Note that the DOL proposes to implement largely non-substantive changes to the forms WH-514, WH-514a, WH-515 and WH-530 as part of this ICR extension request. Most of the alterations are to make the forms clearer for the regulated community and to highlight certain instructions. These changes are highlighted in a separate document for ease of review and uploaded as a supplementary document in ROCIS.

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> 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.

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 this information collection. Unique FLC/FLCE applicants respond to this information collection to support a request for transportation/driving authorization on their Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificate of Registration, Form WH-530, an information collection cleared under OMB Control Number 1235-0016. An electronic submission option for Form WH-530 is not practicable, 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. 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

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

WH-530:

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.

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

This information collection does not have a significant economic impact on a substantial number of small entities. Most of the estimated total respondents are small businesses engaged in agriculture. 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 03/25/2015, that invited public comments about this information collection. 80 Fed. Reg. 15822. The comment period was open for 60 days. Two comments were received. Farmworker Justice (FWJ) submitted comments concerning the use of workers' compensation insurance in place of vehicle insurance coverage. The organization suggested that when a farm labor contractor (FLC) is transportation authorized and is relying on an employer to provide workers' compensation insurance in lieu of liability insurance on the vehicle, the certificate of registration issued by the Department of Labor state that the transportation authorization is limited to such times as the FLC is actually working for the particular employer who is providing the workers' compensation insurance. FWJ also recommended that the certificate of registration additionally state that the transportation authorization is limited to transportation within the scope of workers' compensation coverage. FWJ also suggests that the Department communicate to employers and labor contractors of their obligation to obtain insurance coverage for transportation that is beyond the scope of the workers' compensation insurance.

While the Department understands Farmworker Justice's concerns, the certificate of registration is not part of this paperwork package, and, therefore, not subject to comment at this time. The Department notes that the current WH-530, as well as the proposed revised WH-530, contains language indicating the limitations on transportation where workers' compensation policy is used in lieu of vehicle insurance coverage. Additionally, as the Department is committed to agricultural worker transportation safety, the Department will consider these comments outside of this paperwork package.

One individual commenter suggested that the Department add a checkbox for FLCs engaged in H-2A or H-2B activities. The Department does not believe that any action is necessary in response to this comment as the WH-530 currently requests the applicant to identify whether he or she employs or intends to employ H-2A visa workers or H-2B visa workers.

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 (on Form WH-530), 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 2014, national median hourly wage rate for FLCs of \$19.77 to estimate the value of respondent's time. See DOL, Bureau of Labor Statistics (BLS), Occupational Employment Statistics Survey, (Uploaded as supporting document in ROCIS).

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 in developing the following estimates.

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The DOL estimates 1,079 respondents annually complete approximately 4,911 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 409 hours.

4,911 responses x 5 minutes per response = 409 burden hours.

409 burden hours x \$19.77 = \$8,086 (rounded).

B Form WH-515

The DOL estimates it receives 3,259 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 **272 hours**. **3,259** responses x 20 minutes = **1,086 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. 3,259 responses X 1 minute = **54 hours** for recordkeeping.

3,259 respondents X 26 minutes = **1,412 burden hours**.

1,412 burden hours X \$19.77 (FLC's hourly rate) = **\$27,915** (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 2012-2013. 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 \$19.77 (FLC's hourly rate) = **\$148,532** (rounded).

D Total Hour Burden Costs

409 burden hours for form WH-514 + **1,412 burden hours** for form WH-515 + **7,513 burden hours** for form WH-530 = **9,334 total burden hours** X \$19.77 = **\$184,533** (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 capital 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 \$191,529 (rounded). $4,911 \text{ annual responses} \times \$39 = \mathbf{\$191,529}$.

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 $3,259 \text{ annual responses} \times \$69 = \mathbf{\$224,871}$.

C Form WH-530

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 \$2.03 (in March 2015). With rare exception, completed applications are submitted by mail, for total annual respondent costs of \$30,954 (rounded). $15,026 \text{ applications} \times \$2.06 (\$2.03 \text{ postage} + \$0.03 \text{ per envelope}) = \mathbf{\$30,954. (rounded)}$.

D. Total Associated Costs

$\$191,529 \text{ (Forms WH-514/514a)} + \$224,871 \text{ (Form WH-515)} + \$30,954 \text{ (Form WH-530)} = \mathbf{\$447,354}$.

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 4,911 WH-514s, 3,259 WH-515s and 15,026 WH-530s are filed annually for a total of 23,196 forms filed. DOL estimates that about 10 percent of those forms are produced and distributed by WHD. The WHD processes applications in two locations, and the DOL has averaged the 2015 Atlanta, GA and San Jose/San Francisco/Oakland salary levels to estimate expenses. <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2015/general-schedule/>.

Printing: $23,196 \text{ forms} \times 10\% \times \$0.03 \text{ per form} = \mathbf{\$70 \text{ (rounded)}}$.

Postage: $23,196 \text{ forms} \times 10\% \times (\$0.49 \text{ postage} + \$0.03 \text{ per envelope}) = \mathbf{\$1,206 \text{ (rounded)}}$.

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GS-5, Step 4 mail clerk to mail forms:
23,196 forms x 5 minutes per form X 10% \$18.76 per hour = \$3,626 (rounded).

GS-7, Step 4 clerk to review completed forms:
23,196 forms x 15 minutes per form x \$23.24 per hour = \$134,769 (rounded).

TOTAL ANNUAL FEDERAL COST = \$139,671(rounded).

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

The burdens associated with this ICR have increased slightly due to an increase in the number of forms received. DOL has made minor changes to the forms WH-514, WH-514a, WH-515 and WH-530. Most of the alterations are to make the forms clearer for the regulated community and to highlight certain instructions. See “List of Form Revisions” supplemental document for complete list of changes; those changes are not anticipated to affect the estimated 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.