

Waterman, Robert - WHD

From: Tom Bortnyk <tbortnyk@maslabor.com>
Sent: Tuesday, May 08, 2018 11:56 AM
To: WHDPRAComments
Subject: Public Comment - Control Number 1235-0016

Agency: Wage and Hour Division, Labor

Control Number: 1235-0016

Dear WHD:

I am writing in regards to the Proposed Extension of the Approval of Information Collection Requirements for the Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration (Form WH-530).

Our company's wholly-owned subsidiary, MAS Labor H2A, LLC, is the nation's largest for-profit provider of comprehensive H-2A agency and consulting services in the United States. Our services include some activities that have been historically construed as "soliciting" under the meaning set forth in the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). As a result, MAS Labor H2A, LLC has been required to obtain a Farm Labor Contractor (FLC) certificate of registration in order to provide such services. Additionally, members of our staff who perform such services on the company's behalf have been required to obtain Farm Labor Contractor Employee (FLCE) certificates of registration. Therefore, we have extensive personal knowledge of the WH-530 and information being collected on the WH-530. We would like to point out several inconsistencies, errors, and points of confusion on the form and the published instructions to the form.

First, the form notes on page 1 that Part I is to be completed by "ALL Applicants." This would include both FLC applicants and FLCE applicants. The second item listed in Part one states:

"2. Name to appear on certificate (*Please Type or Print*)"

However, the Instructional and Informational Guide for Applying for a Certificate of Registration (page 5 of the WH-530) notes the following instruction for Item 2:

"Items 2-4 – Person making application. This item is to identify the person submitting the application regardless of whether they are applying for a certificate in their own name or on behalf of an organization."

Clearly, these instructions are contradictory. Item 2 does not ask for the name of the *person submitting the application*; it asks for the *name to appear on the certificate*. The instructions are therefore erroneous and fail to consider that the person submitting the application may be doing so on behalf of an organization and NOT in their own name.

Second, it is unclear whether the address information solicited in Item 2 pertains to the *person submitting the application* or the *applicant*. This has been a common source of errors on the part of the WHD FLC processing office in San Francisco, which has on more than one occasion issued the FLC certificate of registration with the address listed here rather than the proper source of address information for the applicant (Part II, Item 7 of the WH-530). We assume by the phrase "Permanent place of residence" that this inquiry pertains to the *person submitting the application* rather

than the *applicant*. If this is not correct, and the information is indeed intended to pertain to the applicant, then Item 2 should be revised to request "Applicant's physical address." Or, at least, the form should provide clarifying instructions.

We have personally experienced such errors on our own FLC certificates. We must assume, then, that there are countless other FLC applications with erroneous information on their certificates. Logically then, either the FLC certificates and the public FLC database contain erroneous information, or the WHD spends precious time and resources processing requests for corrected certificates. In either case, the public interest is served by amending the form to clarify the information being collected.

Third, it appears that information being collected in Part II, Item 7 is duplicative of information collected in Part I, Item 2. As previously discussed, Item 2 is collecting information on the person submitting the application. It is unclear how this is different than Item 7, which requests "Name of representative for purposes of this application." Presumably, the person submitting the application is the "representative." Otherwise, it would seem odd that so much personal information would be collected about the person submitting the application (see, e.g., Items 3-4) if such person is *not the applicant's representative*.

In light of the foregoing, our recommendations are as follows:

- More clearly delineate between organizational/corporate applicants and individual applicants. Item 2 should not read "Name to appear on certificate," but rather, "Applicant or applicant's representative." The instructions should be amended to specify that FLCE applicants and individual FLC applicants should include their own information, while organizational FLC applications (corporations, partnerships, or other) should include information on the person authorized to act on behalf of the organization. Item 2 may also consider asking for such person's title, if applicable, to add further clarification.
- Make Item 7 in Part II of the WH-530 read "Applicant Name (to appear on certificate)" instead of its current incarnation, which does not match the form instructions. The form instructions should be amended to clarify that Item 7 is asking for the applicant's name, if any individual, or the legal business name/trade name for organizational applicants.
- Remove the "Name of representative for purposes of this application" information collection from Item 7. This information is duplicative of Item 2.
- Clarify that the address information being collected in Item 7 is "Permanent residence/Principal place of business." Currently, this information collection is not labeled other than the words "Street", "City", "State", and "Zip Code". The form should clearly specify that the address information provided in this item will appear on the FLC certificate of registration.

Thank you for your consideration of these comments.

Thomas P. Bortnyk, Esq.
Vice President and General Counsel

TEL: 434.263.4300
FAX: 434.284.7018
tbortnyk@maslabor.com



Mid-Atlantic Solutions, Inc.
400 Front Street, P.O. Box 507
Lovingston, VA 22949
maslabor.com