



July 31, 2017

TO: OMB Desk Officer for DOL-WHD
OIRA_submission@omb.eop.gov

CC: US DOL-OASAM Office of the Chief Information Officer
DPL PRA PUBLIC@DOL.gov

RE: Public Comment on;

SUPPORTING STATEMENT
DISCLOSURES TO WORKERS UNDER THE MIGRANT AND SEASONAL
AGRICULTURAL WORKER PROTECTION ACT
REGULATIONS 29 C.F.R. ;; 500.1,500.75-.76, AND 500.8
Forms WH-501, WH 501S, WH516, and WH-521
OMB CONTROL NO. 1235-0002

NCAE, founded in 1964, is the only national association focusing exclusively on agricultural labor issues from the agricultural employer's viewpoint. NCAE represents labor-intensive agriculture with Congress and federal agencies. Our members are growers, associations, and others whose business interests depend on labor-intensive agriculture. NCAE's membership, including farmers represented by its association members, represents an estimated two-thirds of all U.S. agricultural employers directly engaged in the labor-intensive production of food and nursery crops in the United States. NCAE Members employ a substantial percentage of those migrant and seasonal farm and ranch workers who are impacted by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and are routinely monitored and audited by US Department of Labor, Wage and Hour Division (WHD.) On behalf of our members, we respectfully offer the

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following comments to the proposed changes to the standards for certain housing for agricultural workers.

Compliance with MSPA can be challenging and confusing. The MSPA regulation itself is complex, this complexity is compounded by the fact that the Fair Labor Standards Act (FLSA) includes both overlap and exceptions, and because WHD field operatives do not appear to all share a common interpretation of what the rules require, how they should be implemented and administered, and why. We request that OIRA/OMB rigorously oversee WHD's implementation of the statute and ensure that the agency does not impose on employers greater obligations than those encompassed by the statute. We are concerned that WHD has continued to change and enhance their interpretations, that individual agents have cited employers and suggested substantial repayment numbers and Civil Money Penalties (CMPs) only to be routinely overturned when employers are willing to undertake the effort and costs to appeal.

We are concerned that WHD may use the current submission for authority to further expose growers to legal liability by requiring incorporation in wage statements information that is either not legally required or that is not customarily included in earnings statements. The following points represent only a sample of what we believe to be serious concerns and inconsistencies in WHD's request and in their past interpretation and management of MSPA issues. Specifically:

- In its submission, WHD either misstated or misapplied requirements embodied in WH-516. This is not only confusing but potentially imposes greater legal obligations on employers beyond those envisioned by MSPA. These over-statements and mis-applications should be eliminated.
- WHD's description of 'Wage Statements' is incorrect. It includes several pieces of information that are not required for pay statements; these items should be removed.
- WHD apparently conflates requirements occurring in 29 CFR 500.80 with distinct yet different obligations required by MSPA. Yet, MSPA does not require such additional information. Moreover, FLSA does not require pay stubs.
- Some states (such as Michigan) explicitly limit full usage of Social Security numbers on pay statements. Thus, requiring MSPA to include such items may run contrary to state obligations imposed on growers.
- Throughout its submission, WHD appears to elide distinctions between certain forms (i.e., WH-516) and MSPA requirements. WHD cannot

and should not impose legal obligations on agricultural employers that exceed those set out by Congress.

- Cost estimates are significantly outdated or make incorrect assumptions.
- Development time is understated, particularly in view of the Agency's estimate for Form 790 (containing similar information) on average would require 50 pages to meet the requirements.
- Duplication costs at \$0.04 were estimated by the Agency at \$0.12 in 2010.
- Wage Statement programming costs are not incorporated as no other industry is required to provide the data as indicated in the "Pay Statement."
- There is no estimate for legal review of information.

Based on our evaluation of the form, we urge OIRA not to approve the WHD submission and to return it to the agency to assure that it is modified and restricted to requiring only information required by Congress under MSPA.

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