

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION

2010 H-2A Final Rule FAQs

Round 15: H-2A Labor Contractor Filing Requirements

***Farm Labor Contractor (FLC) and Farm Labor Contractor Employee (FLCE)
Certificates of Registration***

September 17, 2021

1. What is a Farm Labor Contractor (FLC) Certificate of Registration?

A Farm Labor Contractor (FLC) Certificate of Registration is a requirement of the Migrant and Seasonal Worker Protection Act, 29 U.S.C. 1801 et seq. (MSPA). If required under MSPA, an FLC must obtain a Certificate of Registration from the U.S. Department of Labor's Wage and Hour Division (WHD) before engaging in recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker.

Important Note: Most H-2A Labor Contractors (H-2ALCs) are required to obtain an FLC Certificate of Registration and submit it with their *H-2A Application for Temporary Employment Certification*. However, certain persons and organizations are exempt from MSPA and are not required to obtain an FLC Certificate of Registration (such as those solely engaged in certain activities (e.g., custom combine)). In addition, establishments meeting the MSPA definition of an "agricultural association" or "agricultural employer" are not required to register as FLCs. If you have questions as to whether you must register as a FLC, contact WHD at 1-866-4US-WAGE (1-866-487-9243), TTY: 1-877-889-5627.

2. What is a Farm Labor Contractor Employee (FLCE) Certificate of Registration?

Persons employed to perform farm labor contracting activities (e.g., driving covered workers) on behalf of their employer, which is itself required under MSPA at 29 U.S.C.1801 et seq. to register as an FLC, must apply to the U.S. Department of Labor's Wage and Hour Division (WHD) for an FLCE Certificate of Registration before engaging in such activities.

3. How do I obtain an FLC or FLCE Certificate of Registration?

The Department of Labor's Wage and Hour Division (WHD) oversees the FLC and FLCE Certificate of Registration process. To obtain an FLC or FLCE Certificate of Registration, submit Form WH-530, *Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration*, to the WHD, along with additional forms and documentation, as required, depending on the specific activities involved (e.g., housing, transporting, or driving covered workers).

Information on how to apply for FLC and FLCE Certificates of Registration may be found on WHD's website (<https://www.dol.gov/agencies/whd/forms/wh530>) or by phone at 1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627.

Important Note: Where required under MSPA, an H-2ALC is responsible for submitting timely and complete FLC and/or FLCE Certificate of Registration applications to WHD. In addition, the H-2ALC is responsible for submitting evidence of valid FLC and FLCE Certificate(s) of Registration to the Certifying Officer, including those temporarily extended during WHD processing. **Communication regarding the status of any application for FLC and/or FLCE Certificate of Registration, including the receipt and processing of any application, should be directed to WHD, not the Certifying Officer.**

4. If I am an H-2ALC subject to MSPA, what should I submit with the *H-2A Application for Temporary Employment Certification* as evidence of FLC and FLCE Certificates of Registration?

The H-2ALC should submit a copy of valid FLC or FLCE Certificate(s) of Registration showing it is authorized by WHD to perform all farm labor contracting activities that it will be required to perform if the Certifying Officer certifies the *H-2A Application for Temporary Employment Certification*.

If the H-2ALC filed an application to renew an FLC or FLCE Certificate of Registration for farm labor contracting activities it will be required to perform if certified, the H-2ALC may submit a copy of the current FLC or FLCE Certificate of Registration (even if expired) and evidence of an application submitted to WHD that extends the prior registration's validity while pending. For example, the employer should submit a letter issued by WHD that acknowledges receipt of the FLC or FLCE Certificate of Registration renewal application and states that the FLC/FLCE may continue operating under the previously approved certificate until such time as a determination is issued on the pending renewal application.

Important Note: The Certifying Officer may not certify an *H-2A Application for Temporary Employment Certification* unless the H-2ALC submits evidence of FLC and FLCE Certificate(s) of Registration that demonstrate the H-2ALC, its agents, and/or its employees are authorized to perform the farm labor contracting activities that will be performed under the *H-2A Application for Temporary Labor Certification* (e.g., if the H-2ALC will transport workers, evidence of transportation authorization for vehicles with sufficient capacity).

5. What will happen if I do not submit required FLC and FLCE Certificates of Registration with my *H-2A Application for Temporary Employment Certification*?

H-2A Labor Contractors (H-2ALCs) and their agents performing farm labor contracting activities must submit evidence of their FLC Certificate of Registration, if required under MSPA at 29 U.S.C. 1801 et seq., when filing an *H-2A Application for Temporary Employment Certification*. See, e.g., 20 CFR 655.132(b)(2) and 655.133(b). In addition, evidence of the FLCE Certificate of Registration for any employee who will perform farm labor contracting functions must be submitted with the *H-2A Application for Temporary Employment Certification*. The Certifying Officer must receive evidence of FLC and FLCE Certificate(s) of Registration that demonstrate the H-2ALC, its agents, and/or its employees are authorized to perform the farm labor contracting activities that will be performed under the *H-2A Application for Temporary Labor Certification* (e.g., if the H-2ALC will transport workers, transportation authorization for vehicles with sufficient capacity).

The Certifying Officer will issue a Notice of Deficiency under 20 CFR 655.141, notifying the employer that the *H-2A Application for Temporary Employment Certification* is incomplete or does not meet the requirements of 20 CFR part 655, subpart B when an employer has not submitted with the *H-2A Application for Temporary Employment Certification* either:

- (1) the valid, unexpired FLC or FLCE Certificate of Registration; or
- (2) a copy of the current (or recently expired) FLC or FLCE Certificate of Registration and evidence of an application submitted to WHD that extends the prior registration's validity while pending. For example, the employer should submit a letter issued by WHD that acknowledges receipt of the FLC or FLCE Certificate of Registration renewal application and states that the FLC/FLCE may continue operating under the previously approved certificate until such time as a determination is issued on the pending renewal application.

An employer or agent may respond to the NOD with submission of either of the above sets of documents. If the employer's application meets program requirements such that recruitment activities can begin, the Certifying Officer may issue a NOA. However, the Certifying Officer may not certify an *H-2A Application for Temporary Employment Certification* unless the H-2ALC submits evidence of required FLC and/or FLCE Certificate(s) of Registration that demonstrate the H-2ALC, its agents, and/or its employees are authorized to perform the farm labor contracting activities that will be performed under the *H-2A Application for Temporary Labor Certification* (e.g., if the H-2ALC will transport workers, evidence of transportation authorization for vehicles with sufficient capacity).

The Certifying Officer will not hold a final determination on the *H-2A Application for Temporary Employment Certification* in abeyance if the employer or agent fails to provide sufficient evidence of FLC or FLCE Certificate(s) of Registration, as described above, demonstrating the H-2ALC's authorization to perform the farm labor contracting activities required for certification. As a general matter, the Certifying Officer will issue a final determination, which may be a denial, as

appropriate, no later than 30 calendar days before the start date of need identified in the *H-2A Application for Temporary Employment Certification*.

Important Note: In the event the Certifying Officer denies certification due to failure to provide a copy of FLC/FLCE Certificates of Registration, the employer may submit a new *H-2A Application for Temporary Employment Certification* that includes the FLC/FLCE Certificates of Registration in compliance with normal timeframes. *Failure to timely renew FLC/FLCE Certificates of registration does not constitute an emergency situation under 20 CFR 655.134.*

6. If I am an H-2ALC that will provide daily transportation to covered workers, how many FLCE Certificates of Registration must I submit with the *H-2A Application for Temporary Employment Certification*?

The number of FLCE Certificates of Registration that must be submitted with an *H-2A Application for Temporary Employment Certification* depends on considerations such as the number of covered workers to be transported and the seating capacity of the vehicles to be used. In addition, the driving distances involved and whether covered workers are assigned shifts could potentially impact the number of drivers required.

If the number of FLCE Certificates of Registration submitted appears insufficient to carry out the transportation activities described in the *H-2A Application for Temporary Employment Certification*, the Certifying Officer will issue a Notice of Deficiency notifying the employer that certification cannot be granted in the absence of additional information (e.g., evidence of additional valid FLCE Certificates of Registration).