

**SUPPORTING STATEMENT
DAVIS-BACON CERTIFIED PAYROLL
FORM WH-347
(COPELAND ACT)
REGULATIONS 29 C.F.R. §§ 3.3, 5.5
OMB CONTROL NUMBER 1215-0149**

1. The Copeland Act requires contractors and subcontractors performing work on federally financed or assisted construction contracts to furnish weekly a statement with respect to the wages paid each employee during the preceding week. *See* 40 U.S.C. § 3145; 29 C.F.R. § 3.3(b). Regulations 29 C.F.R. § 5.5 (a)(3)(ii)(A) requires contractors to submit weekly a copy of all payrolls to the federal agency contracting for or financing the construction project, if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the contracting agency. This same section requires that the payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i). A signed “Statement of Compliance” indicating the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon Act (DBA) prevailing wage rate for the work performed must accompany the payroll. *Id.* at § 5.5(a)(3)(ii)(B). Regulations 29 C.F.R. § 3.3(b) requires each contractor to furnish such weekly “Statements of Compliance.” *See also, id.* at § 5.5(a)(3)(ii)(B). Regulations 29 C.F.R. §§ 3.4(b) and 5.5(a)(3)(i) require contractors to maintain these records for three years after completion of the work.

Previously, regulations 29 C.F.R. § 5.5(a)(3)(i) required contractors performing work on projects subject to the Davis Bacon and Related Acts (DBRA) to retain the name, address, social security number, correct classifications, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in DBA section 1(b)(2)(B)), daily and weekly number of hours worked, and deductions made and actual wages paid of each worker on the contract. Under both the old and new regulations, whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in DBA section 1(b)(2)(B), the contractor must maintain records showing that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and the costs anticipated or the actual cost incurred in providing such benefits. In addition, contractors employing apprentices or trainees under approved programs must maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Department proposed to remove the regulatory requirement that the weekly payroll submitted to the contracting agency contain each worker's complete social security number and home address. *See* 73 FR 62229 (Oct. 20, 2008). The proposal did not remove the requirement that the contractor or subcontractor maintain in its records worker addresses and social security numbers. *Id.* at § 5.5(a)(3)(i). *See also, id.* at § 5.5(a)(6). In response to public comments that the proposed reduction in identifying information could impair separate identification of employees when more than one employee appears on the payroll bearing the same name, the requirement is revised to continue to require an individual identifying number, which can be the last four digits of the employee's social security number.

2. Contractors and subcontractors must certify their payrolls by attesting that persons performing work on DBRA covered contracts have received the proper payment of wages and fringe benefits. *See id.* at § 5.5(a)(3)(ii)(B). Contracting officials and Wage and Hour Division (WHD) staff use the records and certified payrolls discussed in Item 1 of this supporting statement in verifying contractors pay the required rates for the work performed.

The Department of Labor (DOL) has developed optional use Form WH-347, Payroll Form, that contractors may use to meet the payroll reporting requirements. *Id.* at § 5.5(a)(3)(ii)(A); *see also, id.* at § 3.3(b). The form contains the basic payroll information that contractors must furnish each week they perform any work subject to DBA labor standards. The contractor also completes, dates, and signs a statement on the reverse side of the form to meet the certification requirement. The contractor submits the completed form to the contracting agency, not to the WHD. The contractor may substitute copies of its payroll containing all of the required information and provide the required certification.

3. In accordance with the Government Paperwork Elimination Act (GPEA), 44 U.S.C. § 3504, the DOL has posted Form WH-347 on the Internet (<http://www.dol.gov/esa/whd/forms/wh347.pdf>) in a printable and fillable format that automatically performs some mathematical calculations. Individual contracting agencies determine any electronic submission options, because contractors submit the information directly to each contracting agency and not to the WHD. 29 C.F.R. § 5.5(a)(3)(ii)(A). The submission of photocopies or other automated duplication of the contractor's regular payrolls containing all of the required information pertinent to the government construction project(s) is sufficient to satisfy the requirements. *Id.*
4. Information comes from original contractor payroll data and is not available from any other source. With the exception of the additional requirement to retain social security numbers, the basic recordkeeping under this collection is a restatement of requirements cleared under OMB control numbers 1215-0017 (Records to be Kept by Employers, 29 C.F.R. Part 516) and 1215-0140 (DBRA and Contract Work Hours and Safety Standards Act Recordkeeping and Reporting Requirements, 29 C.F.R. Part 5). There is no duplication in reporting requirements; however, copying information from regular payrolls onto Form WH-347 or its equivalent to meet unique Copeland Act requirements

and maintaining a copy of the certified payrolls may result in additional burden that essentially duplicates work already performed. As explained in Item 6 of this supporting statement, the DOL is under an injunction to maintain the collection requirement for individualized payroll information reporting.

5. This information does not have a significant economic impact on a substantial number of small entities.
6. The WHD and contracting agencies have a statutory obligation to determine and ensure that contractors performing work on Davis Bacon and Related Act covered construction projects comply with the requirements discussed in Item 1 of this supporting statement. Beyond the statutory requirements, certified payrolls are an essential tool used to determine compliance.

Contractors must submit the information each week in which their employees perform any work on covered construction projects, because Copeland Act provisions preclude less frequent submission. The DOL published revised final regulations in the *Federal Register* on May 28, 1982, (29 C.F.R. Part 5, 47 Fed. Reg. 23658; 29 C.F.R. Part 3, 47 Fed. Reg. 23678) to require only a weekly submission certifying compliance with the DBA and Copeland Act provisions, instead of the requirement for contractors to submit weekly a copy of the actual payroll information for each worker performing DBRA covered work. On December 23, 1982, the U.S. District Court for the District of Columbia permanently enjoined the Secretary of Labor from implementing those provisions. See *Building and Construction Trades Department, AFL-CIO, et al. v. Raymond J. Donovan, et al.*, 553 F. Supp. 352. On July 5, 1983, the U.S. Court of Appeals for the District of Columbia Circuit held the regulatory change to allow the submission of statements of compliance, in lieu of actual payroll information on each employee, to be invalid. See *Building and Construction Trades Department, AFL-CIO, et al. v. Raymond J. Donovan, et al.*, 712 F. 2d 611. Importantly, however, the court noted that there was no specific requirement for what individualized wage information for each covered worker was necessary on the certified payroll submissions. See *id.* at 633. On January 16, 1984, the U.S. Supreme Court declined to review the decision, allowing the appellate decision to become final. See 464 U.S. 1069. The revised rule will retain the requirement for individualized payroll information, thus complying with the injunction, but reduce respondent burden and opportunities for identity theft by removing the requirement that the weekly submissions show workers' home addresses and complete social security numbers.

7. Except for the statutory requirement to submit the information weekly, this information collection involves no special circumstances.
8. Routine contacts with respondents have resulted in the DOL becoming aware of concerns with some of the data elements (complete social security numbers and home addresses) contained in the weekly submissions required by the current regulations. Pursuant to 5 CFR 1320.11(a), the DOL published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* that specifically invited public comments about the proposed revised

information collection requirements on October 20, 2008. 73 FR 62229. On October 1, 2008, pursuant to 5 CFR 1320.12(a), the Department published routine Paperwork Reduction Act notice in the *Federal Register* seeking comments on the existing Davis Bacon information collection requirements. 73 FR 57153. No comments were submitted in response to the October 1 request. While comments received in response to the NPRM addressed some aspects of the proposed changes to the information collection requirements, no comments directly addressed the methodology for estimating the public burdens for complying with the requirements. Comments submitted in response to the NPRM are addressed in the preamble to the final rule.

9. The DOL makes no payments or gifts to respondents completing these disclosures.
10. The DOL makes no assurances of confidentiality to respondents. As a practical matter, contracting agencies 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.
11. This information is used to ensure workers receive proper wage payments. The current regulations require the release of personally identifiable information (including workers' names, home addresses, and social security numbers) on the certified payrolls submitted to government agencies. The Department is proposing to remove the requirement that workers' home addresses and social security numbers be included on the certified payroll sent to contracting agencies.
12. The DOL bases the following burden estimates for certified payrolls on agency experience, except as otherwise noted. F.W. Dodge Report data for the period June 1, 2007, through May 31, 2008, indicate there were 109,323 state and local and 3032 federal construction projects during that period. The DOL estimates approximately 33 percent of state and local construction projects utilize federal funds.

$36,077$ state and local construction projects ($109,323$ projects \times 33 percent) + 3032 Federal projects = $39,109$ projects subject to DBA labor standards.

$39,109$ projects \times 8 (estimated number of contractors and subcontractors per project) = $312,872$ (number of individual contractor and subcontractor projects).

$312,872/4$ (estimated number of Davis-Bacon projects per contractor) = $78,218$ respondents.

$312,872 \times 23$ responses (estimated number of weekly responses) = $7,196,056$ total annual responses.

$7,196,056 \times 55$ minutes (54 minutes to complete Form WH-347 or its equivalent plus one minute for recordkeeping)/ 60 minutes per hour = $6,596,385$ hours.

Absent any specific data on salaries of employees in the construction industry who complete Form WH-347 or its equivalent, the DOL has used the May 2008 average annual hourly rate for production or nonsupervisory workers on construction industry payrolls of \$21.60 to determine respondent costs. See *The Employment Situation: July 2008*, DOL, Bureau of Labor Statistics

http://www.bls.gov/news.release/archives/empst_08012008.pdf, Table B-3, p.24.

Accordingly, the DOL estimates annual respondent costs to be \$142,481,916.
6,596,385 hours x \$21.60.

13. Most contractors submit certified payrolls in person during their frequent contacts with the contracting agency, usually with the contracting officer responsible for the building project; however, approximately 10 percent of contractors mail their submissions, for estimated mailing costs of \$323,823. $7,196,056 \times 0.1 \times \0.45 (\$0.42 postage + \$0.03 per envelope).

In addition, contractors must print and copy the certified payroll, for a total printing and copying cost of \$575,684 (rounded). $7,196,056 \text{ copies} \times 2$ (one printed original plus one recordkeeping copy) x \$0.04 cost.

Total maintenance and operations costs = \$899,507. $\$323,823 + \$575,684$.

14. In calculating the following federal costs, the DOL estimates contracting agencies on average use an employee paid at the GS-5, Step 4 rate who devotes approximately 10 minutes to reviewing and verifying every third submitted payroll:

$7,196,056 \text{ annual responses} / 3 = 2,398,685 \text{ responses reviewed annually}$.

$2,398,685 \text{ annual responses} \times 10 \text{ minutes} / 60 \text{ minutes per hour} = 399,781 \text{ hours}$.

$399,781 \text{ hours} \times \15.67 (GS 5, Step 4 pay rate, Rest of U.S. rate) = \$6,264,568.

In addition, the Department estimates an employee paid at GS-2, Step 4 files the agency copy of certified payrolls.

$7,196,056 \text{ annual responses} \times 1 \text{ minute} = 119,934 \text{ hours}$.

$119,934 \text{ hours} \times \11.28 (GS 2, Step 4 Rest of U.S. Rate) = \$1,352,856.

Total Federal Cost = \$7,617,424. $\$6,264,568 + \$1,352,856$.

15. The DOL is changing its total burden estimates from 5,025,040 responses, 4,700,000 hours, and \$211,000 to 7,196,056 responses, 6,596,385 hours, and \$899,507 in maintenance and operations costs. This results an overall increase of 2,171,016 responses, and 1,896,385 hours and \$688,507 in maintenance and operations costs.

This revised rule introduces no new information collection requirements nor proposes any substantive or material changes to the existing information collection requirements noted above. However, the Department is removing the requirement to report an employee's complete social security number and home address, which the Department estimates will reduce the average reporting time from an average of 56 minutes per response to 55 minutes per response. Adoption of the revised rule will reduce burden by 119,934 hours.

The DOL has an adjustment in the estimated burden, because the estimated number of DBRA covered projects requiring submission of Form WH-347 or its equivalent has increased from 27,310 projects to 39,109 projects. Estimated operation and maintenance costs have increased, again due to the higher number of DBRA covered projects and the fact that prior efforts to calculate the burden did not separately state the cost of copying certified payrolls for recordkeeping purposes.

16. The DOL does not publish the results of this information collection.
17. The DOL does not seek an exception to the requirement to display the expiration date on this information collection.
18. The DOL is not requesting an exception to the certification requirements for this information collection.