

SUPPORTING STATEMENT
REPORT OF CONSTRUCTION CONTRACTOR'S WAGE RATES
REGULATIONS 29 C.F.R. PART 1, FORM WD-10
OMB CONTROL No. 1215-0046

1. The Davis-Bacon Act (DBA), 40 U.S.C. § 3141, *et seq.*, provides, in part, that every contract in excess of \$2000 to which the United States or the District of Columbia is a party for construction, alteration, and/or repair, which requires or involves the employment of mechanics and/or laborers, shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics that were determined by the Secretary of Labor to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed.

The Administrator of the Wage and Hour Division (WHD), through a delegation of authority, is responsible for issuing these wage determinations (WDs). Regulations 29 C.F.R. § 1.3 provides, in part, that the Administrator will conduct a continuing program for obtaining and compiling wage rate information for the purpose of making WDs. The Administrator will also encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials, and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. *See* 29 C.F.R. § 1.3(a). The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to DBA prevailing wage requirements. *Id.*

2. Form WD-10 is an optional form respondents may use to ensure consistency in submission of wage data. Respondents may use an alternate format to submit data, provided it includes the information requested in the applicable regulations. The WHD uses the wage data submitted by voluntary respondents to determine locally prevailing wages under the Davis-Bacon and Related Acts (DBRA). This wage data collection is a primary source of information and is essential to the determination of prevailing wages.

The WHD sends letters announcing a DBRA wage survey to Congressional representatives, contractor trade associations, and building trade unions at both the local and headquarters levels to advise them of the survey and solicit their cooperation in furnishing payment data. The WHD also sends letters to general contractors that have been identified as working on construction projects within the survey period. General contractors and subcontractors are requested to supply a list of their subcontractors, who are then also notified of the survey. (The WHD provides a Form WD-10 continuation sheet for this purpose.) In addition, the WHD notifies Federal, state, and local agencies. These letters inform them of the type of construction and area being surveyed, survey period, and cut-off data for data submission and asks them to encourage contractors to respond to the survey when contacted. Finally, in order to facilitate participation by interested parties not known to the agency, the WHD Web site also includes information about upcoming and ongoing DBRA WD surveys. *See* www.dol.gov/esa/programs/dbra/surveys.htm.

3. Because the WHD has an automated survey data system that generates contact letters to notify interested parties when up-coming surveys are initiated, the WHD requests that all interested parties (i.e., national, state and local unions, associated contractor groups) identify the appropriate survey contact(s) for their organizations. The WHD maintains this information in a central data bank and provides a list of active and planned wage surveys on its Internet site (<http://www.dol.gov/esa/programs/dbra/schedule.htm>), which broadens accessibility to other interested parties.

In accordance with the Government Paperwork Elimination Act (GPEA), an electronic version of this form is available through the WHD Internet Web site <http://www.dol.gov/esa/programs/dbra/wd-10.htm>), allowing respondents to complete and submit Form WD-10 electronically on-line.

4. Because this information is not available from any other source, and the WHD has the sole responsibility for determining prevailing wages under the DBRA, there is no duplicative effort to obtain this information.
5. This information collection does not have a significant economic impact on a substantial number of small entities. The information collected is the minimum necessary for the DOL to determine prevailing wages under the DBRA.
6. The WHD could not effectively issue WDs based on current prevailing wage rates for various localities throughout the country were the agency to collect the information less frequently.
7. There are no special circumstances associated with this information collection.
8. The DOL published a Federal Register Notice on July 20, 2007, inviting public comments about this information collection. 72 FR 39850. The agency received four timely comments. Two comments addressed the burden this information collection imposes on respondents. All the comments spoke to the commenters' understanding of how the DOL collects and uses the data to determine prevailing wages; however, most of the concerns were within the larger context of the burden imposed by DBRA statutory requirements for contractors to pay prevailing wages. In addition, a comment from the Buckeye Institute for Public Policy Solutions and a joint comment from the Associated Builders and Contractors, Inc., Women Construction Owners and Executives USA, and National Association of Minority Contractors Northeast Region (collectively referred to as the ABC) arrived well after the comment period closed. The agency considered all the comments, including those submitted late.

A contractor states the "collection is necessary and does provide the information to determine 'prevailing' wages for specific areas," and the collection "is not a burden." Routine agency contacts with respondents, likewise, have not indicated that the information collection instrument, itself, imposes any substantive problems or undue burdens. The ABC also states that, given current law, the collection of wage information "continues being necessary for the calculation of prevailing wage determinations," and "the collection of the type of information being proposed does have practical utility."

The ABC, however, alternately opines that the time burden estimate is overly optimistic and reflects the minimum amount of time needed to complete Form WD-10, and the estimate may be valid for “contractors that routinely fill out the WD-10s.” While the ABC offers no alternative time estimate, the comment does suggest adding an optional question that asks each responder to indicate how long it took to complete the survey, or using timers to determine how long it takes to complete on-line submissions. The DOL disagrees with the need to add such a question and believes adopting the suggestion could violate an OMB directive that agencies should not conduct special surveys to obtain information on which to base hour burden estimates, unless directed to do so. On-line session timers would merely indicate how long a Web page has been open and would not indicate whether the person was responding to the information collection the entire time or responding intermittently while performing unrelated tasks. In the absence of a better estimate, the DOL has not changed the reported burden.

The contractor also states that it is “useless for merit contractors to provide data for wage determinations,” because the DOL considers union wage rates and other Federal construction work during the survey period in determining DBRA prevailing wages. The Independent Electrical Contractors (IEC) Beacon Hill Institute at Suffolk University, Buckeye Institute, and ABC raise concerns that, because respondents self-report data, union wages rates may be over-represented in DBRA WDs and suggest using Bureau of Labor Statistics (BLS) data to determine DBRA prevailing wages, in the same way the DOL determines prevailing wages under the McNamara-O’Hara Service Contract Act (SCA), 41 U.S.C. § 351, or the Foreign Labor Certification Program. The Mackinac Center for Public Policy suggests the WHD should only send this information collection to and accept information from employers, in order to minimize the chances of over-representing union wages.

The WHD considers all relevant information, in accordance with Regulations 29 C.F.R. Part 1. A DBRA “prevailing wage” is the wage paid to the majority (more than 50 percent of the employees) of the laborers or mechanics in the classification on similar projects in the area during the period in question. 29 C.F.R. § 1.2(a)(1). If the same wage is not paid to a majority of those employed in the classification, the prevailing wage is the average of the wages paid, weighted by the total employed in the classification. *Id.* The WHD must encourage voluntary submission of wage rate data—by contractors, contractors’ associations, labor organizations, public officials, and other interested parties—that reflects wage rates paid to laborers and mechanics on various types of construction in the area. 29 C.F.R. § 1.3. The WHD may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. *Id.* The information submitted should reflect not only the wage rates paid to a particular classification in an area, but also the type or types of construction on which such rate or rates are paid and whether or not such rates were paid on Federal or federally assisted projects subject to DBA prevailing wage requirements. *Id.* In compiling wage rate data for building and residential wage determinations, the WHD does not use data from Federal or federally assisted projects subject to DBA prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. *Id.* The WHD uses data from Federal or federally assisted projects in compiling wage rate data for heavy and highway wage determinations. *Id.*

To maximize opportunities for participation, the WHD (as previously indicated in Item 2) sends letters announcing a DBRA wage survey to Congressional representatives, contractor trade associations, and building trade unions at both the local and headquarters levels to advise them of the survey and solicit their cooperation in furnishing payment data. The WHD also sends letters to general contractors and subcontractors that have been identified as working on construction projects within the survey period. In addition, the WHD notifies Federal, state, and local agencies. The contents of these letters involve the type of construction and area being surveyed, survey period, and cut-off date for data submission and ask recipients to encourage contractors to respond to the survey when contacted. Finally, in order to facilitate participation by interested parties not known to the agency, the WHD Web site also includes information about upcoming and ongoing DBRA WD surveys. See www.dol.gov/esa/programs/dbra/surveys.htm.

The WHD determines SCA WDs under different regulatory criteria that do not impose the same information collection needs. Unlike DBRA WDs that are based upon survey data for specific types of construction within the construction industry, the SCA uses cross industry survey data. In addition, under the SCA, the concept of “locality” is broader than under the DBA. As a result, the WHD has adopted a different approach that uses nationwide health and welfare fringe benefit data to establish the same fringe benefit rate for all SCA occupations in all locations throughout the United States. Such a nationwide approach would not be consistent with the DBA, and no interested party has suggested that the WHD adopt a similar approach.

Despite the differences between the SCA and DBA, the WHD examined the feasibility of using BLS data, including funding pilot surveys and reviewing the extent to which BLS Occupational Employment Statistics data might provide detailed construction industry wage rate information by locality and occupation. Those efforts resulted in the Employment Standards Administration (ESA), of which the WHD is a part, determining that, while the use of BLS data was attractive from several standpoints (including timeliness), “the feasibility of meeting the Davis-Bacon statutory requirements, the cost of obtaining fringe benefit data, and [ESA] concerns about the completeness of wage data when classified by occupation and type of construction,” led to the conclusion that improving the current wage survey process offered the “best and most cost-effective solution for long term improvements in the Davis-Bacon wage determination program.”

The IEC raises concerns about the ability of the WHD to process the information collected under this request. The IEC also states that the “current survey process would certainly be improved by allowing contractors to submit information electronically, or simply by making the entire survey an online application.” The ABC also comments that the DOL “can foster greater survey participation by allowing contractors to submit their responses electronically and giving contractors much greater latitude in terms of the form in which their data can be submitted.” The WHD recognizes the need to conduct and complete surveys in a timely manner. In recent years, significant changes have been made to the survey process, including automating the printing and mailing of scannable survey forms under an agreement with the Bureau of the Census and offering of the Web based electronic survey form explained in Item 3. In addition, the DOL does not reject relevant information merely because the respondent opted not to use Form WD-10 (paper or electronic), provided the information otherwise meets applicable requirements needed for consideration. In such cases, agency inputs the required

data. Where respondents submit information that the agency cannot consider, staff work with the submitter to obtain usable information. The WHD is committed to continuing its information technology infrastructure improvements to expedite the processing of DBA surveys.

The IEC also states that an explanation of the prevailing wage rate, specifically fringe benefits, would be helpful to contractors and clarify the process. The IEC notes that one of its members has been unclear as to what exactly an “annuity” is, or how it varies from the pension plan, and, more pointedly, what “other” means. The IEC goes on to say that simply making these explanations available on the Web site would provide more transparency and legitimacy to the process. In collecting fringe benefit information, Form WD-10 asks for information about contractor payments for the following fringe benefit categories: health and welfare, pension (401K, etc.), apprenticeship training, vacation and holiday, and additional fringe benefits.

Finally, the Mackinac Center suggests that the use of counties as the geographic units for determining prevailing wage determinations is obsolete, and that a smaller number of geographical districts, or even a single statewide prevailing wage schedule would better serve the regulatory needs and recommends fewer wage classifications. Regulations 29 C.F.R. § 1.7 specifies the area that the WHD must consider in determining prevailing wages. The area for making a wage determination will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination. 29 C.F.R. § 1.7(a). If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered; provided that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county. 29 C.F.R. § 1.7(b). If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered. 29 C.F.R. § 1.7(c).

9. The DOL makes no payments or gifts to respondents.
10. The DOL informs respondents that their identity will be kept confidential to the maximum extent possible under existing law. As a practical matter, the DOL would only disclose information collected under this request in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and its attendant regulations, 29 C.F.R. Part 70, and the Privacy Act, 5 U.S.C. § 552a, and its attendant regulations, 29 C.F.R. Part 71. The DOL has disclosed summaries of the wage data utilized to determine prevailing wages and fringe benefits but not the names and addresses of the respondents who submitted the data.
11. The DOL asks no sensitive questions in this information collection.
12. Based on actual response rates, the DOL estimates that 22,000 respondents submit an average of three WD-10s per year, totaling 66,000 annual responses. The DOL also estimates that

respondents spend an average of approximately 20 minutes completing each response, for a total of 22,000 annual burden hours. $66,000 \times 20 \text{ min}/60 \text{ min.} = 22,000$.

Clerical personnel generally complete most WD-10s. Without specific wage data regarding respondents, the DOL has used the April 2007 average hourly earnings for production or nonsupervisory workers in the private sector on nonfarm payrolls of \$17.34 to estimate respondent costs. (See *The Employment Situation: June 2007*, DOL, U.S. Bureau of Labor Statistics, http://www.bls.gov/news.release/archives/empsit_07062007.pdf). The DOL estimates total annual costs for respondents' time to be \$381,480. $22,000 \text{ hours} \times \17.34 .

13. This information collection requires no extraordinary systems or technologies to collect data; thus, respondents incur no costs, except for the value of their time, as accounted for in Item 12. Moreover, respondents incur no mailing costs, since the WHD makes the forms available on the Internet or provides postage paid envelopes to return completed surveys.

14. The DOL, based on actual expenses, estimates annual Federal costs as follows:

- **Analysis**

10 staff years (50% of work hours of 20 Wage Analysts in time spent analyzing and compiling wage data from completed WD-10s).

10 GS-9 employees x 0.5 time X \$48,104 salary =	\$240,520
10 GS-11 employees x 0.5 time x \$58,203 salary =	\$291,015
Analysis Sub-Total:	\$531,535

- Mail Processing Costs for 66,000 Surveys

The WHD mails Forms WD-10 to survey respondents, enclosing franked and addressed envelopes for returning completed forms.

Printing and Mailing:	\$157,572
Scanning:	\$334,045
Mail Processing Sub-Total	\$491,617

- Contract for Data Entry

\$848,000 (Actual Annual Average Costs for 2005-2006)

- Contract for Data Verification

\$516,488 (Actual Cost 06-2007 to 05-2007)

- Data Sources

\$252,970 (Agency Share for *FW Dodge Reports* subscription)

TOTAL ANNUAL FEDERAL COSTS = \$2,124,122 (\$531,535 + \$491,617 + \$848,000 + \$252,970)

15. The DOL has decreased its annual burden hours estimate from 25,000 to 22,000, due to a decrease in the estimated overall number of respondents and the number of responses from 75,000 to 66,000. The decrease in the number of responses is a reflection of a decrease in the size of the areas surveyed and the corresponding number of respondents. Agency operation and maintenance costs have increased from \$434,718 to \$2,124,122 due to the agency increasing the resources it spends in order to improve data collection and timely processing the data in accordance with GPRA goals.
16. The DOL does not publish this information.
17. The DOL will display the expiration date for this information collection.
18. The DOL does not seek an exception to the certification requirement.