

SUPPORTING STATEMENT
REPORT OF CONSTRUCTION CONTRACTOR'S WAGE RATES
REGULATIONS 29 C.F.R. PART 1, FORM WD-10
OMB CONTROL No. 1235-0015

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.*

In October 2009, the National Defense Authorization Act (NDAA) of 2010 (Guam Realignment Fund) placed a new requirement on the WHD to establish wage rates for Guam under the provisions of the Davis-Bacon Act. The NDAA required that WHD establish wage rates for Guam under the provisions of the Davis-Bacon Act. The NDAA required that WHD establish wage rates for Guam each year until 90% of the funds for the Guam realignment project were expended. In addition, this Act placed an additional requirement on the WHD that the rates and employees working in Guam under the H2B program could not be used in the calculation of the DBA rates. This requirement required that the WHD amend instructions for completion of the Form WD-10, which is the instrument for collecting DBA data. In March 2010, a proposed change to the Instruction Sheet for the Form WD-10 was forwarded to OMB for review incorporating this requirement for Guam wage rate respondents. In April 2010, the change to the Instruction Sheet was approved by OMB.

Form WD-10 has been slightly altered. The division in the header "Employment Standards Administration" has been deleted. This reflects DOL's organizational change since the last approval reflecting that Employment Standards Administration has been eliminated.

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 ask 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 <http://www.dol.gov/whd/programs/dbra/surveys.htm>.

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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 June 25, 2010, inviting public comments about this information collection. 75 FR 36444. The agency received no comments.

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/whd/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 WHD, 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 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.”

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 October 2010 average hourly earnings for production or nonsupervisory workers in the private sector on nonfarm payrolls of \$19.17 to estimate respondent costs. (See *The Employment Situation: October 2010*, DOL, U.S. Bureau of Labor Statistics, http://www.bls.gov/news.release/archives/empsit_11052010.pdf). The DOL estimates total annual costs for respondents' time to be \$421,740. $22,000 \text{ hours} \times \19.17 .

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 \$56,791 salary =	\$283,955
10 GS-11 employees x 0.5 time x \$68,712 salary =	\$343,560
Analysis Sub-Total:	\$627,515

- 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

- Contract for Data Verification

\$516,488

- Data Sources

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

TOTAL ANNUAL FEDERAL COSTS = \$2,736,680 (\$627,515 + \$491,617 + \$848,000 + \$516,488 + \$252,970)

15. The DOL has made no changes to its burden estimates, except to update hourly rates to calculate burden.

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.