

**SUPPORTING STATEMENT
DAVIS-BACON CERTIFIED PAYROLL
FORM WH-347
(COPELAND ACT)
REGULATIONS 29 C.F.R. §§ 3.3-.4, 5.5
OMB CONTROL NUMBER 1235-0008**

Note: The Department is converting this previously approved generic ICR into a common forms ICR in order to more accurately reflect the burdens associated with the ICR. To that end, the Department is initially claiming all burden (since a joint responsibility exists between the WHD and the contracting agency) and then expects that going forward, contracting agencies will report the burden associated with their use of certified payrolls. The DOL will correspondingly reduce its share of the burden via non-material change requests until only DOL financed or assisted contracts appear under the DOL burden.

A: JUSTIFICATION

1. The Copeland Act requires contractors and subcontractors performing work on federally financed or assisted construction contracts to furnish weekly a statement on the wages paid each employee during the prior week. *See* 40 U.S.C. § 3145; 29 C.F.R. § 3.3(b). The Copeland Act provision cited above specifically requires the regulations to “include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.” This requirement is implemented by 29 CFR 3.3 and 3.4 and the standard Davis-Bacon contract clauses set forth at 29 CFR 5.5. The provision at 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 not a party to the contract, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the contracting agency. This provision requires that the payrolls submitted shall set out accurately and completely information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals, and instead, the payrolls shall only need to include an individually identifying number for each employee (*e.g.* , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347instr.htm>.

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. *See id.* § 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* 29 C.F.R. § 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.

Regulations 29 C.F.R. § 5.5(a)(3)(i) requires 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 made or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in DBA section 1(b)(2)(B) (now codified at 40 U.S.C. § 3141(2)(B)), daily and weekly number of hours worked, and deductions made and actual wages paid of each worker on the contract. 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. 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 Davis-Bacon contract clauses at 29 CFR § 5.5(a)(5) and (8) obligate contractors to comply with requirements of 29 CFR part 3 on covered contracts and incorporate in such contracts, by reference, the requirements of 29 CFR parts 1, 3 and 5.

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* 29 C.F.R. §§ 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. 29 C.F.R. § 5.5(a)(3)(ii)(A); *See also* 29 C.F.R. § 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 page 2 of the form to meet the certification requirement. The contractor submits the completed form weekly 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/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 this payroll submission requirement. *Id.*

4. Information comes from original contractor payroll data and is not available from any other source. There is no duplication in reporting requirements; however, copying information from regular payrolls onto Form WH-347 or its equivalent by some contractors to meet specific 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, the DOL is under a permanent court injunction to maintain the requirement to provide this information.
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. In addition, a court injunction requires the DOL to maintain the weekly submission of payroll information for each worker. 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. On January 16, 1984, the U.S. Supreme Court declined to review the decision, allowing the appellate decision to become final and precluding the DOL from eliminating this aspect of the information collection. *See* 464 U.S. 1069.

7. Except for the statutory requirement to submit the information weekly, this information collection involves no special circumstances.
8. The DOL published a Notice in the *Federal Register* inviting public comments about this information collection on June 9, 2014 (79 FR 33001). Ten comments were received from the public. All were supportive of the renewal of the information collection.

Several commenters expressed their view that the collection was an indispensable tool in effective enforcement and compliance. Midwest Region Laborers-Employers Cooperation and Education Trust (LECET) indicated that the requirement for certified payroll submission “protects workers, protects taxpayers and is an absolutely necessary requirement for the Wage and Hour Division to function.” The Sheet Metal and Air Conditioning Contractors National Association indicated that the collection of information is necessary for the proper performance of the prescribed functions of the agency. The Midwest Region Foundation for Fair Contracting, Inc. (MRFFC) stated that “the certified payroll requirements are a critical tool to ensure thorough and complete investigations.” The Indiana-Illinois-Iowa Foundation for Fair Contracting (III FFC) expressed their view that certified payrolls are critical to agency functions because they give the USDOL and awarding agencies the opportunity to spot-check DBRA compliance.” The Alliance for Competitive Contracting states that the certified payroll is “of the utmost importance in our efforts to ensure that the USDOL carries out its duty to enforce the Davis-Bacon Act.” The law firm, Weinberg, Roger & Rosenfeld stated that “review of certified payroll forms is essential to compliance monitoring of wages and fringe benefits.” The International Union of Operating Engineers (IUOE) stated that the statement of compliance and certified payroll is “indispensable to effective enforcement.”

Other commenters thought that the certified payroll requirements created transparency in government. (Fair Contracting Foundation of Minnesota). A few commenters (MRFFC, LECET) thought that the requirement to submit certified payrolls removed worker’s fear of retaliation.

Some commenters thought the Department should encourage state, local and private entities to use commercially available electronic systems to minimize burden. (Bldg Trades). The commenter went on to indicate that DOL and OMB should jointly develop government wide policy encouraging use of commercial available electronic systems. The Department declines to intervene. The WH-347 is an optional use form. Contractors and subcontractors may make their own decisions about how they will collect and submit data required under this ICR.

Finally, several commenters urged the Department to extend the collection of weekly certified payrolls. (LECET; FCF, MRFFC).

No commenters opposed the information collection and no commenters discussed the calculation in burden.

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, federal 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. Effective January 18, 2009, the information collection requirements in 29 CFR 3.3(b), 5.5(a) (3)(ii)(A) and 5.5(a)(a)(3)(ii)(B)(1) were revised to better protect the personal privacy of laborers and mechanics employed on covered construction contracts. See Final Rule published on December 19, 2009 (73 FR 77504-12) and OMB approval of information collection requirements published on January 16, 2009 (74 FR 2862).
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 March 1, 2010, through February 28, 2011, indicates there were 120,921 state and local and 8144 federal construction projects during that period. The DOL estimated in the last renewal that approximately 33 percent of state and local construction projects utilize federal funds. $39,903 \text{ state and local construction projects (projects} \times 33 \text{ percent)} + 8,144 \text{ Federal projects} = 48,048 \text{ projects subject to DBA labor standards}$. Since 2011, there has been a general reduction in spending on construction projects for both state and local projects and federal projects. (See links: 2013 Dodge Construction Outlook 2013 Report, http://trilogy-solutions.com/site/assets/files/1057/dodge_2013_construction_outlook.pdf and <http://www.statista.com/statistics/184383/value-of-new-federal-construction-put-in-place-in-the-us-since-1999/>). In 2013, state and local construction project spending was 97% (\$247.69 billion versus \$254.75 billion) of what it was in 2011 and federal construction project spending was 74% of what it was in 2011 (\$23.49 billion versus \$31.65 billion). As a result of these decreases in spending, the DOL estimates that there were 117,293 state and local and 6,043 federal construction projects during 2013. The DOL continues to estimate that approximately 33 percent of state and local construction projects utilize federal funds (38,706).

$38,706 \text{ state and local} + 6,043 \text{ federal projects} = 44,749 \text{ projects subject to DBA labor standards in 2013}$.

$44,749 \text{ projects} \times 8 \text{ (estimated number of contractors and subcontractors per project)} = 357,992 \text{ (number of individual contractor and subcontractor projects)}$.

$357,992/4 \text{ (estimated number of Davis-Bacon projects per contractor)} = 89,498 \text{ respondents}$.

$357,992 \times 23 \text{ responses (estimated number of yearly responses)} = 8,233,816 \text{ total annual responses}$.

$8,233,816 \times 56 \text{ minutes (55 minutes to complete Form WH-347 or its equivalent plus one minute for recordkeeping)} / 60 \text{ minutes per hour} = 7,684,895 \text{ hours (rounded)}$

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 average annual hourly rate for production or nonsupervisory workers on construction industry payrolls of \$24.56 (Feb. final number) to determine respondent costs. (See *The Employment Situation: April 2014*, DOL, Bureau of Labor Statistics <http://www.bls.gov/news.release/pdf/empst.pdf>,

Table B-8) Accordingly, the DOL estimates annual respondent costs to be \$188,741,021 (rounded). 7,684,895 hours x \$24.56.

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; some now use electronic submission (the Department estimates 10%); however, approximately 10 percent of contractors mail their submissions, for estimated mailing costs of \$428,158. $8,233,816 \times 0.1 \times \0.52 (\$0.49 postage + \$0.03 per envelope).

In addition, contractors print and copy the certified payroll, for a total printing and copying cost of \$658,705 (rounded). $8,233,816 \text{ copies} \times 2$ (one printed original plus one recordkeeping copy) x \$0.04 cost.

Total maintenance and operations costs = \$1,086,863. $\$428,158 + \$658,705$

14. In calculating the following federal costs, the Department estimates DOL agencies on average use an employee paid at the GS-5, Step 4 (2014 Rest of U.S. Rate)¹ who devotes approximately 10 minutes to reviewing and verifying every third submitted payroll: Note that the Department is only reporting DOL federal costs associated with this ICR as directed for a common forms ICR.

The Department estimates 100 DBA DOL projects annually x 8 estimated contractors/subcontractors per project = 800.

$800 \times 23 \text{ responses per year} = 18,400 \text{ total annual responses.}$

$18,400 \text{ total annual responses} / 3$ (verifies every third submitted payroll) = 6,133 reviewed annually.

$6,133 \times 10 \text{ minutes} / 60 \text{ minutes per hour} = 1,022 \text{ hours}$

$1,022 \text{ hours} \times \16.67 (GS 5, Step 4 pay rate, 2014 Rest of U.S. rate) = \$17,037

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

$18,400 \text{ annual responses} \times 1 \text{ minute} / 60 = 307 \text{ hours.}$

$307 \text{ hours} \times \12.00 (GS 2, Step 4 Rest of U.S. Rate) = \$3,684

Total DOL Federal Cost = \$20,721. ($\$17,037 + \$3,684$).

However, because WHD is converting this ICR to a common forms ICR, the Department is not claiming the federal cost of other contracting agencies that normally review/maintain forms. This is in compliance with the ROCIS HOW TO Guide

¹ http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/RUS_h.pdf

instructions which states: “when answering the Annual Cost to the Federal Government question, only include costs to the Host Agency.”

Total Federal Cost to Host Agency = \$20,721

15. The DOL has identified a decrease in burden due to the drop in spending on federal, state, and local construction projects. This has resulted in a decreased burden estimate of 607,016 responses (from 8,840,832 to 8,233,816) 566,548 burden hours (from 8,251,443 to 7,684,895) and \$35,919 (from \$1,122,782 to \$1,086,863).
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.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

This information collection does not employ statistical methods.