

**SUPPORTING STATEMENT
LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS
REGULATIONS 29 C.F.R. PART 4
OMB No. 1235-0007**

A. Justification

1. Circumstances Necessitating Information Collection

The Wage and Hour Division of the U.S. Department of Labor administers the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. § 6703 *et seq.* The McNamara-O'Hara Service Contract Act (SCA) applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees. The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. Safety and health standards also apply to such contracts. The compensation requirements of the SCA are enforced by the Wage and Hour Division.

A. Vacation Benefit Seniority List

Service Contract Act section 2(a), provides that every contract subject to the Act must contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees performing work on the contract. Many wage determinations (WDs) issued for recurring services performed at the same Federal facility provide for certain vested fringe benefits (e.g., vacations), which are based on the employee's total length of service with a contractor or any predecessor contractor. *See* 29 C.F.R. § 4.162. When found to prevail, such fringe benefits are incorporated in WDs and are usually stated as "one week paid vacation after one year's service with a contractor or successor, two weeks after two years", etc. These provisions ensure that employees receive the vacation benefit payments that they have earned and accrued by requiring that such payments be made by successor contractors who hire the same employees who have worked over the years at the same facility in the same locality for predecessor contractors.

However, our enforcement experience revealed that a number of service contractors have had difficulty in obtaining length of service data for those employees who have been employed by predecessor contractors, and they are reluctant to rely on any information provided by individual employees. Contractors need to know what their vacation payment liability is, based on accurate information, early in the contract period. Contractors who may unintentionally fail to meet their vacation pay obligations because of a lack of timely and accurate information could be held liable for large back wage payments, which could lead to debarment from bidding on future contracts. *See* 29

C.F.R. § 4.188. In addition, efficient transmittal of such information will save the costs of protracted labor standards investigations and disputes. We have been informed by a number of service contractors that if accurate information could be obtained by a succeeding contractor, greater voluntary compliance with the vacation fringe benefit provision would be ensured and many of these problems could be eliminated. To ensure that proper vacation benefits are paid to service employees and that contractors have reasonably accurate information available to them on which to determine fringe benefit liability, Sections 4.6(1) and 4.173 of 29 C.F.R. Part 4 provide for the transfer of a list of the anniversary dates of employment of service employees from incumbent contractors to successor contractors through the contracting agency.

B. Conformance Record

SCA section 2(a) provides that every contract subject to the Act must contain a provision specifying the minimum monetary wage and fringe benefits to be paid the various classes of service employees employed on the contract work. *See* 41 U.S.C. § 6703, *et seq.* Problems sometimes arise 1) when employees are working on service contracts in job classifications that DOL was not previously informed about and 2) when there are job classifications for which no wage data are available.

Section 4.6(b)(2) of 29 C.F.R. part 4 provides a process for “conforming” (i.e., adding) classifications and wage rates to the WD for classes of service employees not previously listed on a WD but where employees are actually working on an SCA covered contract. This process ensures that the requirements of section 2(a) of the Act are fulfilled and that a formal record exists as part of the contract which documents the wage rate and fringe benefits to be paid for a conformed classification while a service employee(s) is employed on the contract.

The contracting officer is required to review each contractor-proposed conformance to determine if the unlisted classes have been properly classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications (and wages) listed in the WD. *See* 29 C.F.R. § 4.6(b)(2). This includes a burden to the contractor as well as to the contracting agency. The contracting agency burden is discussed under federal costs. The contractor burden is addressed in item 12 and covers the contractor and any employees of the contractor who are included in burden. Moreover, the contracting agency is required to forward the conformance action to the Wage and Hour Division for review and approval. *Id.* However, in any case where a contract succeeds a contract under which a class was previously conformed, the contractor may use an optional procedure known as the indexing (i.e., adjusting) procedure to determine a new wage rate for a previously conformed class. *See* 29 C.F.R. § 4.6(b)(2)(iv)(B). This procedure does not require DOL approval but does require the contractor to notify the contracting agency in writing that a previously conformed class has been indexed and include information describing how the new rate was computed. *Id.*

C. Submission of Collective Bargaining Agreement (CBA)

Section 2(a) and 4(c) of the SCA provide that any contractor which succeeds to a contract subject to the Act and under which substantially the same services are furnished, shall pay any service workers employed on the contract no less than the wages and fringe benefits to which such workers would have been entitled if employed under the predecessor contract. See 29 C.F.R. § 4.163(a).

Section 4.6(l)(1) of Regulations, 29 C.F.R. Part 4, requires an incumbent (predecessor) contractor to provide to the contracting officer a copy of any CBA governing the wages and fringe benefits paid service employees performing work on the contract during the contract period. These CBAs are submitted by the contracting agency to the Wage and Hour Division of the Department of Labor where they are used in issuing WDs for successor contracts subject to section 2(a) and 4(c) of SCA. See 29 C.F.R. § 4.4(c).

2. Use

A. Vacation Benefit Seniority List

The information submitted is used by successor contractors to determine vacation fringe benefit entitlements earned and accrued by service employees who were employed by predecessor contractors and have continued on with the successor contractor. Failure to collect this information would result in the difficulties outlined in item 1 A. above.

B. Conformance Record

Conformance actions are reviewed by Wage and Hour Division staff to determine the appropriateness of the conformance and to determine whether the contractor has complied with the requirements of the Act and its regulations. Review of the conforming action is necessary because of significant past abuses or failure to observe the contract conforming requirements, which led to serious, protracted compliance problems when discovered during the course of Wage-Hour investigations. Also, such problems can be harmful to contracting agencies by causing interruption of essential contracting services and/or possible additional costs on a contract.

C. Submission of Collective Bargaining Agreement (CBA)

In general, CBAs are submitted by the contracting agency to the Wage and Hour Division for use in the issuance of WDs for successor contracts subject to section 2(a) and 4(c) of SCA. However, due to the creation of the Wage Determinations OnLine (WDOL) Program, contracting agencies now have the option to independently create CBA WDs online for incorporation into federal service contracts without prior DOL approval or issuance. If the contracting agency chooses to have the DOL issue the CBA WD, then the appropriate CBAs must be submitted to the Wage Hour Division. Without submission of these CBAs, Wage and Hour would be unable to provide contractors with the wage rates and fringe benefits required by law to be paid to service employees performing work on the contract.

3. Technology

The vacation benefit seniority list and the record of conformance may be submitted in any format. Paper or electronic copies of CBAs are acceptable. With respect to implementation of the Government Paperwork Elimination Act (GPEA), electronic submission of all relevant information is acceptable. The Department created the Wage Determinations OnLine System (WDOL) (<http://wdol.gov/>), which allows contracting agencies independently to create CBA WDs online for incorporation into federal service contracts without prior DOL approval.

4. Duplication

These information collections duplicate no other known WHD requirements. Basic records required to be kept contained in regulation 29 C.F.R. §4.6(g)(1)(i) through (iv) have been previously approved under basic FLSA recordkeeping requirements through OMB 1235-0018. This information collection contains three requirements that were not cleared under OMB 1235-0018 and are not available from any other source: 1) vacation benefit seniority lists; 2) conformance record reports; and 3) collective bargaining agreements.

5. Minimizing Small Entity Burden

These information collections do not have a significant economic impact on a substantial number of small entities. The vacation benefit seniority list and the CBA are documents that an employer would maintain to determine liabilities to employees even if this information was not required by Regulations, 29 C.F.R. Part 4. The information in the conformance action report is the minimum necessary to determine whether the contractor has conformed wage rates and fringe benefits in accordance with the requirements of the Act and its regulations.

6. Consequence of Failing to Collect and Obstacles to Reducing Burden

The seniority list must be transmitted through the contracting agency to the successor contractor at the end of the predecessor's contract, usually annually, if it is to achieve its purpose. CBAs must be submitted only once during the contract period, unless subsequently amended. The record of conformance actions must be submitted to the contracting agency within 30 days of the initial performance on the contract of the class of workers not listed on the WD to ensure that the provisions of section 2(a) of the SCA are satisfied (see 1.B. above). Less frequent submission of the seniority list, CBA or record of conformance action is not feasible.

7. Special Circumstances

The DOL associates no special circumstances associated with this information collection.

8. Public Comments

The DOL published a *Federal Register* Notice inviting public comments about this information collection. See 81 FR 15131, March 21, 2016. The agency received 1 comment requesting the draft supporting statement. No other comments were received.

9. Payment or Gifts to Respondents

The DOL makes no payments or gifts to respondents completing these recordkeeping requirements.

10. Assurances of Confidentiality

The DOL makes no assurances of confidentiality to respondents. 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 the attendant regulations, 29 C.F.R. Part 70, and the Privacy Act, 5 U.S.C. §552a with its attendant regulations, 29 C.F.R. Part 71.

11. Sensitive Questions

The DOL asks no sensitive questions in these information collections.

12. Estimated Annual Respondent Burden Hours

The DOL bases its estimates in this package on historical data over the past three years.

A Vacation Benefit Seniority List

Virtually all SCA covered contracts contain WDs providing vacation requirements that apply to successor contracts. However, about one-half are multi-year contracts (generally three years), where the contractor succeeds itself in two of the three years and would only need to submit the vacation list in the third year. According to the Federal Procurement Data System's (FPDS) 2007 Federal Procurement Report¹, 114,039 Federal government contract actions were subject to the SCA during that reporting period. Thus, about 76,027 (57,020 + 19,007) contractors would submit a vacation benefit seniority list each year.

Based on the ready availability of payroll and employment records, an estimate of one hour per response has been made for this requirement. The only variation would be the size of the contractor's work force and large contractors would submit a larger list of

¹ https://www.fpds.gov/downloads/FPR_Reports/Fiscal%20Year%202007/Agency%20Views.pdf

employees. Total annual burden is **76,027 hours** (76,027 contractors x 1 hour = 76,027 hours).

B. Conformance Record

DOL estimates 114 contracts require conformance annually. The annual burden is 1/2 hour per contract to assemble and transmit the conformance record to the contracting agency for a total annual burden of 57 hours (114 contracts x 30 minutes = 57 hours). These estimates are based on workload in processing conformance actions. This burden estimate includes burden to the contractor and any employees of the contractor. For burden to the contracting agency, see Federal Costs section.

Indexing costs

As noted earlier, in a case where a contract succeeds a contract under which a class was previously conformed, the contractor may use a procedure known as indexing to determine a new wage rate for a previously conformed class. This procedure does not require DOL approval but does require the contractor to notify the contracting agency in writing that the previously conformed class has been indexed and include information describing how the new rate was computed.

The Department estimates that 20 percent of the annual conformed contracts are subject to indexing and due to the dynamic changing rates and mathematical computations, approximately 2 hours of time is required to complete the indexing procedure and notify the contracting agency in writing.

The Department estimates this adds 46 hours of burden annually. (114 x 20% = 23 x 2 hours = 46 hours).

Burden hours: 57 hours (conformance) + 46 hours (indexing) = **103 hours**.

C. Collective Bargaining Agreements (CBAs)

DOL estimates about 1,000 CBAs are received by contracting agencies annually. Based on workload, the transmitting of each CBA by the contractor to the contracting agency takes approximately five minutes for a total annual burden of approximately **83 hours** (rounded). 1,000 CBAs x 5 minutes = 83.0 hours (rounded). Please note, the Department created the Wage Determinations OnLine System (WDOL) (<http://wdol.gov/>), which allows contracting agencies independently to create CBA WDs online for incorporation into federal service contracts without prior DOL approval. Historically, only about 25 percent of CBA Wage Determinations are received for DOL processing; the other 75 percent are used by agencies to issue CBA Wage Determinations directly through the WDOL system.

TOTAL ANNUAL BURDEN: 76,027 + 103 + 83 = 76,213 HOURS.

Without specific wage data regarding respondents, the DOL has used the average hourly earnings of production or nonsupervisory workers in the service industry of \$21.33 for January 2016, to estimate respondent costs (*See The Employment Situation, January 2016*, Table B-8, U.S. Department of Labor, Bureau of Labor Statistics, <http://www.bls.gov/news.release/empsit.t24.htm>). The DOL estimates total annual respondent costs for the value of their time to be \$1,625,623 (76,213 hours x \$21.33).

13. Estimated Annual Respondent Capital/Start-Up/Operation/Maintenance Costs

The DOL associates no capital, start-up, operation or maintenance costs with this information collection. Copies of vacation benefit seniority lists, conformance records, and CBAs are personally provided to the contracting agency for appropriate action. Copies of these records as necessary may be mailed by the contracting agency to the Labor Department or a successor contractor as appropriate.

14. Estimated Annual Federal Costs

Federal employee pay rates are available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2016/general-schedule/>

A. Vacation Benefit Seniority List

The Federal costs involve the processing of the list by the contracting agency:

76,027 contracts x .25 hours per contract processing by GS 3, step 4 clerk = 19,007 hours (rounded).

19,007 hours x \$13.56 (RUS Rate) = \$257,735 (rounded).

TOTAL ANNUAL FEDERAL COSTS FOR VACATION BENEFIT LISTS = \$257,735

B. Conformance Record

The Federal costs involve the review and processing of the conformance record by the contracting agency (CO) and the Department of Labor.

DOL: 114 conformance reports x .25 hours per report processing by a GS 11, step 4 = 29 hours (rounded).

29 hours x \$34.08 (DC rate) = \$988 (rounded).

CO: 114 conformance reports x .50 hours each processing by GS 3, step 4 through agency to DOL = 57 hours.

57 hours x \$14.80 (DC Rate) = \$844 (rounded).

114 conformance reports x .25 hours each review and processing by GS 11, step 4 = 29 hours (rounded).

29 hours x \$34.08 (DC Rate) = \$988 (rounded).

Indexing review by GS 11, Step 4: .5 hours x 22 annually = 11 hours.

11 hours x 34.08 = \$375 (rounded)

Mail: 228 mailings (114 to Wage and Hour, 114 responses from DOL) x \$0.46 postage + \$0.03 per envelope = (\$104.88) + (\$6.84) = \$112 (rounded).

TOTAL ANNUAL FEDERAL COSTS FOR CONFORMANCE RECORD = \$3307.

C. Collective Bargaining Agreements

Although the majority of CBA WDs are now created online by contracting agencies and the remaining CBA WDs are manually issued by the DOL, all CBAs require processing by the agencies. The Federal costs involve the processing and review of CBAs by the contracting agencies and their submission to Wage and Hour.

250 total CBAs x 0.25 hours each processing by GS 3, step 4 = 63 hours.

63 hours x \$13.56 (RUS Rate) = \$854 (rounded).

Mailing costs from agency to DOL

250 CBAs x \$1.90 postage each + \$0.45 per envelope = \$588 (rounded).

TOTAL ANNUAL FEDERAL COSTS FOR CBAs = \$1442.

TOTAL FEDERAL COSTS FOR SCA INFORMATION COLLECTIONS = \$257,735 + \$3307 + \$1442 = \$262,484.

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

The DOL has reflected a slight increase in burden for conformance records based on the actual numbers over the last three year approval period. The increase, however, is not substantial.

16. Publishing Data From Information Collection

The DOL does not publish this information.

17. Display of OMB Approval Expiration

While the DOL does not seek an exception from the requirements to display the OMB approval expiration date, it should be noted that the DOL associates no forms with these information collections.

18. Exceptions to Certification Statement

The DOL does not seek an exception to any of the certification requirements for this information collection. This request complies with 5 C.F.R. § 1320.9.

B. Employing Statistical Methods

Not applicable.