

**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**

Part A: Justification

The Department has identified the WH-347 as a common form.

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 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 07/07/17 (82 FR 31636). The agency received 3 comments; from Associated Builders & Contractors, Inc. (ABC); the International Union of Operating Engineers'; and the Associated General Contractors of America (AGC).

As ABC, Inc. points out, the information contained on the WH-347 is information that the contractors are already required to maintain by 29 CFR 5.5(a)(3)(i). 29 CFR 5.5(a)(3)(ii)(A) states that the information can be submitted in any form desired by the contractor,

so long as the required information is present and is accompanied by a statement of compliance, with the use of the WH-347 is optional. Therefore, if contractors prefer to present the information which they already have to collect and maintain in a different format for the purposes of submitting certified payroll, they can do so. The WH-347 is merely for their convenience and does not significantly increase their burden. This comment discusses issues that ABC, Inc. has (or believes that it has) with the survey process by which prevailing wage rates are determined for a locality. This has nothing to do with the WH-347, which is merely an optional form for the contractors to record, among other things, the rates that they are paying, and verify that those rates do at least equal or exceed the rates determined to be prevailing. Continuing or discontinuing the WH-347 has no effect on those rates, nor on the contractors' obligation to pay them and keep track of having done so. As stated, the information contained on the WH-347 is information that the contractor has to record and maintain regardless of the certified payroll/WH-347 requirement, so the payroll/HR personnel would have to be trained in these regulations and requirements whether the use of WH-347 was continued or not. Similarly, the DBA requires that workers be paid the prevailing wage rate for the classification(s) of work they perform, so contractors would have to go to the effort of determining the proper classification for work performed by employees even in the absence of the WH-347. Therefore, the WH-347 is not actually imposing any significant burden that is not already imposed by the requirements of the DBA. Although we encourage agencies to adopt electronic submission, attempting to require all agencies to permit it in all circumstances does not seem appropriate, given the extra IT costs it might entail not only for federal agencies, but potentially also state and local agencies (as certified payrolls must also be submitted on contracts covered by the Davis-Bacon Related Acts).

As the International Union of Operating Engineers letter states, certified payrolls are a very important source of information for WHD enforcement efforts, as well as an important monitoring and enforcement tool for the agencies that receive them on a weekly basis. The certified payrolls do make it easier to detect various prevailing wage violations, including misclassification of workers, and those violations do lead to unfair bidding practices and fraud, as well as workers not receiving the wages due to them. The letter is also correct in stating that much of the information included on the WH-347 is information that payroll personnel would be required to determine and record due to other obligations under the DBA, FLSA, and other statutes, so that the additional burden should be fairly minimal. This is particularly true given that the use of the WH-347 form is optional, so that if another format for presenting the information required on the WH-347 is more compatible with a contractor's method of recording and maintaining this necessary information, the contractor's staff could use that format rather than the optional WH-347. With regards to the suggestion that the WH-347 be revised to include information as to the fringe benefit plan(s), the amounts that the ER is claiming as contributions to those fringe benefit plans, and more specific information as to deductions taken, as on the samples provided, this would be useful information to have clearly stated on the WH-347 for monitoring and enforcement purposes. Moreover, since the employer should already be tracking this information due to their obligations under the DBA and other acts (if they are claiming a credit for the fringe benefit contributions), any

additional burden on payroll or other HR employees should be fairly minimal. As this change would probably provide useful information in exchange for little additional work by the contractors and their payroll staff, we may want to consider making this revision in future.

As AGC acknowledges, the Copland Act requires contractors or sub-contractors performing work on contracts subject to the DBA labor standards to submit a weekly state of wages. See 40 USC 3145. Similarly, the Davis Bacon Act requires contractors or sub-contractors performing work on contracts subject to the DBA labor standards to pay laborers and mechanics the applicable prevailing wage rate(s) at least once a week See 40 USC 3142(c)(1). As these are clearly stated statutory requirements, WHD does not have the authority to issue regulations allowing contractors to pay workers and/or submit weekly wage statements on a less frequent basis. In addition, this issue does not directly relate to the WH-347 form itself, as the same information would have to be provided whether the contractors were providing it on a weekly or biweekly basis. As stated, although WHD continues to support agencies who are moving towards the electronic submission of certified payroll, we do not feel that it is appropriate to require other agencies to permit their contractors to submit electronic certified payroll.

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 January 1, 2016, through December 31, 2016, indicates there were 111,763 state and local and 3,861 federal construction projects during that period. The DOL estimates approximately 33 percent of state and local construction projects utilize federal funds. 36,881 state and local construction projects (projects x 33 percent) + 3,861 Federal projects = 40,742 projects subject to DBA labor standards.
40,702 projects x 8 (estimated number of contractors and subcontractors per project) = 325,616 (number of individual contractor and subcontractor projects).

$325,616 / 4$ (estimated number of Davis-Bacon projects per contractor) = 81,404 respondents.

$325,616 \times 23$ responses per project x 4 projects per respondent (estimated number of

yearly responses) = 7,489,168 total annual responses.

$7,489,168 \times 56 \text{ minutes (55 minutes to complete Form WH-347 or its equivalent plus one minute for recordkeeping)}/60 \text{ minutes per hour} = 6,989,890 \text{ hours.}$

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 seasonally adjusted September 2017 average annual hourly rate for production or nonsupervisory workers on construction industry payrolls of \$27.01 to determine respondent costs. *See The Employment Situation: September 2017*, DOL, Bureau of Labor Statistics <https://www.bls.gov/news.release/pdf/empsit.pdf>, p. 39, Table B-8. Accordingly, the DOL estimates annual respondent costs to be \$188,796,929 (rounded). $6,989,890 \text{ hours} \times \27.01 .

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; however, approximately 10 percent of contractors mail their submissions, for estimated mailing costs of \$389,437 ($\$7,489,168 \times 0.1 \times \0.52 (\$.49 postage + \$0.03 per envelope)).

In addition, contractors print and copy the certified payroll, for a total printing and copying cost of \$599,133 (rounded). ($7,489,168 \text{ copies} \times 2$ (one printed original plus one recordkeeping copy) $\times \$0.04$ cost).

Total maintenance and operations costs = \$988,570. ($\$389,437 + \$599,133$)

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:
 $7,489,168 \text{ annual responses}/3 = 2,496,389 \text{ responses reviewed annually.}$

$2,496,389 \text{ annual responses} \times 10 \text{ minutes}/60 \text{ minutes per hour} = 416,065 \text{ hours.}$

$416,065 \text{ hours} \times \17.31 (GS 5, Step 4 pay rate, Rest of U.S. rate, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/RUS_h.pdf) = \$7,202,085

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

$7,489,168 \text{ annual responses} \times 1 \text{ minute}/60 = 124,819 \text{ hours}$

$124,819 \text{ hours} \times \12.46 (GS 2, Step 4 Rest of U.S. Rate) = \$1,555,245

Total Federal Cost = \$8,757,330. ($\$7,202,085 + \$1,555,245$)

15. The DOL has changed the estimated burden from 8,840,832 responses and 8,251,443 hours to 7,489,168 responses and 6,989,890 hours, a decrease of 1,351,664 responses and 1,261,553, because of updated data on the number of covered contractors who respond to this information collection. Estimated operation and maintenance costs have decreased from \$1,122,782 to \$988,570, a decrease of \$134,212 for the same reasons.
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.

Part B: Statistical Methods

This information collection does not employ statistical methods.