

**SUPPORTING STATEMENT
DAVIS-BACON CERTIFIED PAYROLL
FORM WH-347
(COPELAND ACT)
29 CFR Part 3.3-4, 5.5
OMB CONTROL NUMBER 1235-0008**

This ICR is submitted for revision along with the Notice of Proposed Rulemaking under RIN 1235-AA40. The NPRM is titled: Updating the Davis-Bacon and Related Acts Regulations. Some changes to references in the regulations are proposed and two additional recordkeeping requirements are proposed (although it is not proposed that the records be added to the certified payroll form WH-347). As a result, there are no changes to the WH-347 Certified Payroll Form. The Department proposes to remove the table listing the OMB control numbers related to the Paperwork Reduction Act at the end of the regulation in 29 CFR 5.5.

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

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 CFR 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 CFR 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 CFR 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). It is proposed in the NPRM that this requirement be moved to 29 CFR 5.5(a)(3)(ii)(B) and while additional records are proposed (telephone number and email address), the proposed regulation indicates that the telephone number and email address (like Social Security number and street address) not be included on the weekly certified payroll form. The new recordkeeping requirement to add telephone number and email address, is listed in 29 CFR 3.4(b). 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

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<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>. No changes to this form are proposed associated with the NPRM.

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) and this is proposed in the NPRM to move to § 5.5(a)(3)(ii)(C). 29 CFR 3.3(b) requires each contractor to furnish such weekly “Statements of Compliance.” See also 29 CFR 5.5(a)(3)(ii)(B) and proposed § 5.5(a)(3)(ii)(C). 29 CFR 3.4(b) and 5.5(a)(3)(i) require contractors to maintain these records for three years after completion of the work.

Current 29 CFR 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. The Department proposes in the NPRM to add a requirement to retain telephone number and email address in the same section. Whenever the Secretary of Labor has found under current 29 CFR 5.5(a)(1)(iv) and proposed 29 CFR 5.5(a)(3) 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.

The Department proposes to add paragraph (a)(3)(iii) to 29 CFR 5.5 which will require all contractors, subcontractors, and recipients of federal assistance to maintain and preserve Davis-Bacon contracts, subcontracts, and related documents for 3 years after all the work on the prime contract is completed. These related documents include contractor and subcontractor bids and proposals, amendments, modifications, and extensions to contracts, subcontracts, and agreements. The Department notes that it is a normal business practice to keep such documents and does not expect an increase in burden associated with this requirement.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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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 CFR 5.5(a)(3)(ii). 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 (Department) has developed optional use Form WH-347, Payroll Form, that contractors may use to meet the payroll reporting requirements. 29 CFR 5.5(a)(3)(ii) (A) and proposed 5.5(a)(3)(ii)(B). See also 29 CFR 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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

In accordance with the Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, the Department has posted Form WH-347 on the Internet (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/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 CFR 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. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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 Department is under a permanent court injunction to maintain the requirement to provide this information.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

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This information does not have a significant economic impact on a substantial number of small entities.

6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

WHD and contracting agencies have a statutory obligation to determine and ensure that contractors performing work on DBRA 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 Department to maintain the weekly submission of payroll information for each worker. The Department published revised final regulations in the Federal Register on May 28, 1982, (29 CFR Part 5, 47 Fed. Reg. 23658; 29 CFR 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 Department from eliminating this aspect of the information collection. See 464 U.S. 1069.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

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- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

But for the statutory requirement to submit the information weekly, this information collection involves no special circumstances.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Notice of Proposed Rulemaking (NPRM) that is associated with the revision to this ICR solicits public comment on the paperwork burden of the information collection request. The NPRM published on March 18, 2022. The Federal Register Citation is 87 FR 15698.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

The Department offers no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a system of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

The Department makes no assurances of confidentiality to respondents. As a practical matter, information gathered during the course of an investigation of a complaint is generally disclosed only in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; and attendant regulations, 29 CFR parts 70 and 71. The FOIA provides an exception from its disclosure requirements for records or information compiled for law enforcement purposes to the extent that release of the information could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis. 5 U.S.C. section 552(b)(7)(D). The FOIA also provides an exemption for business records and trade secrets.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The Department requires Social Security numbers, addresses, and proposes to require email address and telephone number, be maintained by the employer. The current and proposed regulations explicitly exclude such private data from the weekly payroll submission.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.**

The Department bases burden estimates for certified payrolls on agency experience, except as otherwise noted. F.W. Dodge report data for the period January 1, 2017 through December 31, 2019 indicates there were an annual average of 115,497 state and local and

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5,335 federal construction projects during that period. The Department estimates that 33% of state and local construction projects use federal funds (38,114 projects). $(115,497 \times 33\% = 38,114)$.

To this amount, the Department adds all the federal projects $38,114 + 5,335 = 43,449$ projects subject to DBRA labor standards.

$43,449$ projects $\times 8$ (estimated number of contractors and subcontractors per project) = $347,592$ (number of individual contractor and subcontractor projects). The Department estimates 4 Davis-Bacon projects per contractor.

$347,592 \div 4 = 86,898$ respondents.

The Department estimates 23 responses per project annually. $347,592 \times 23 = 7,994,616$ responses.

The Department estimates 55 minutes to complete the WH-347 form or its equivalent plus one minute for recordkeeping (total of 56 minutes per form).

$7,994,616 \times 56$ minutes per/60 min per hour = $7,461,642$ burden hours.

Absent specific data on salaries of employees in the construction industry who complete form WH-347 or its equivalent, the Department has used the seasonally adjusted October 2021 Table B-3, Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted average hourly rate for production or nonsupervisory workers on construction industry payrolls to determine respondent costs. This rate is \$33.38. See the Employment Situation, October 2021, DOL, Bureau of Labor Statistics, Table B-3. To this amount, the Department adds 46% benefits cost (\$15.35) plus 17% overhead cost (\$5.67) for a total loaded wage rate of \$54.40.

$7,461,642$ burden hours \times \$54.40 = $405,913,325$ (rounded) respondent costs.

Additionally, the Department proposes to add two recordkeeping requirements (telephone number and email address) that are not required to be submitted with the certified payroll. See proposed 29 CFR § 5.5(a)(3)(ii). While the Department believes that as the normal course of business such records are kept, it assesses a slight burden to account for the new requirements. (ten seconds per worker). **Note** that these new recordkeeping requirements are not otherwise required in the Fair Labor Standards Act (FLSA) general recordkeeping requirements so they are not accounted for elsewhere. In the regulatory impact analysis of the NPRM, the Department estimated there are 154,500 potentially affected employers and 1.2 million potentially affected workers. The Department uses the potentially affected employer population here for respondents and potentially affected workers for responses for these new recordkeeping requirements. This is slightly higher than the respondents who actually submit the WH-347.

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$1,200,000 \text{ workers} \times \text{ten seconds per worker} \times 1 \text{ time per year} = 12,000,000 \text{ seconds}$

$12,000,000 \text{ seconds} \div 60 \text{ seconds per minute} \div 60 \text{ min per hour} = 3,333 \text{ hours (rounded)}$.

Additional proposed recordkeeping burden = 3,333 hours.

Absent specific data on salaries of employees in the construction industry who complete form WH-347 or its equivalent, the Department has used the seasonally adjusted October 2021 Employment Situation Table B-3, Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted to determine respondent costs. This loaded wage rate is \$54.40.

$3,333 \text{ hours} \times \$54.40 = \$181,315 \text{ (rounded)}$.

TOTAL ESTIMATED ANNUALIZED RESPONDENT BURDEN AND COSTS

Requirement	Respondents	Responses	Burden Hours
WH-347 form			
WH-347	86,898*	7,994,616	7,461,642
NPRM records	154,500	1,200,000	3,333
TOTALS	154,500	9,194,616	7,464,975

*note that those respondents who complete the WH-347 form annually is a subset of the larger recordkeeping respondents

$7,464,975 \text{ burden hours} \times \$54.40 = \$406,094,640 \text{ (rounded) respondent costs}$.

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

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 contractors now use electronic submission; however approximately ten percent of contractors mail their submissions for estimated mailing costs of \$487,671.

$7,994,616 \text{ responses} \times 10\% = 799,461$

$799,461 \times 0.61 \text{ (0.58 cents postage + 0.03 cents envelope)} = \$487,671 \text{ (rounded)}$.

Additionally, contractors print and copy the certified payroll, for a printing and copying cost of \$639,569.

$7,994,616 \times 2 \text{ copies (one original plus one recordkeeping)} \times 0.04 \text{ cents copy cost} = \$639,569 \text{ (rounded)}$.

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Total maintenance and operations cost = \$639,569 + \$487,671 = \$1,127,240.

14. Provide estimates of annualized costs to the federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 into a single table.

In calculating federal costs, the Department estimates that contracting agencies on average use an employee paid at the GS-5, Step 4 rate who devotes approximately ten minutes to reviewing and verifying every third submitted payroll.

$7,994,616 \text{ responses} \div 3 = 2,664,872 \text{ responses reviewed annually.}$

$2,664,872 \text{ responses reviewed} \times 10 \text{ minutes per response} / 60 \text{ min per hour} = 444,145 \text{ hours.}$

$445,145 \text{ hours} \times \$18.40 = \$8,172,268.$

Additionally, the Department estimates that a federal worker GS-2, Step 4 files the agency copy of certified payrolls.

$7,994,616 \text{ responses} \times 1 \text{ minute} \div 60 \text{ min per hour} = 133,244 \text{ hours}$

$133,244 \text{ hours} \times \$13.24 = \$1,764,151$

Total federal cost is $\$1,764,151 + \$8,172,268 = \$9,936,419$

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The estimated burden hours have increased as the corresponding responses and respondents have increased due to updated data. Two additional recordkeeping requirements are proposed, (telephone number and email address) (although it is not proposed that the records be added to the certified payroll form WH-347).

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The Department does not publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB Approval of the information collection, explain the reasons that display would be inappropriate.

The Department does not seek an exception to the requirement to display the expiration date on this information collection.

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18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

The Department is not requesting an exception to any of the certification requirements for this information collection. This request complies with 5 CFR 1320.9.

B. Employing Statistical Methods

Not applicable.