

PART 9001—SCOPE

17. The authority citation for part 9001 continues to read as follows:

Authority: 26 U.S.C. 9009(b).

§ 9001.1 [Amended]

18. Section 9001.1 is amended by removing the number “400” and adding in its place the number “300” in both instances in which it appears.

PART 9003—ELIGIBILITY FOR PAYMENTS

19. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 [Amended]

20. In section 9003.1, paragraph (b)(8) is amended by removing the number “400” and adding in its place the number “300”.

PART 9031—SCOPE

21. The authority citation for part 9031 continues to read as follows:

Authority: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 [Amended]

22. Section 9031.1 is amended by removing the number “400” and adding in its place the number “300” in both instances in which it appears.

PART 9033—ELIGIBILITY FOR PAYMENTS

23. The authority citation for part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

§ 9033.1 [Amended]

24. In section 9033.1, paragraph (b)(10) is amended by removing the number “400” and adding in its place the number “300”.

Dated: October 8, 2008.

Donald F. McGahn, II,

Chairman, Federal Election Commission.

[FR Doc. E8–24505 Filed 10–17–08; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 40**

[Docket No. RM06–22–000]

Mandatory Reliability Standards for Critical Infrastructure Protection; Notice of Extension of Time

Issued October 10, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Proposed Clarification: Extension of comment date.

SUMMARY: On September 18, 2008, the Commission issued an order proposing to clarify that the facilities within a nuclear generation plant in the United States that are not regulated by the U.S. Nuclear Regulatory Commission are subject to compliance with the eight mandatory “CIP” Reliability Standards approved in Commission Order No. 706. The date for filing comments on the Commission’s proposal is being extended at the request of the Edison Electric Institute and the Nuclear Energy Institute.

DATES: Comments are due November 3, 2008.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site:* <http://ferc.gov>.

Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand-deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Jonathan First (Legal Information), Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8529; Regis Binder (Technical Information), Office of Electric Reliability, 888 First Street, NE., Washington, DC 20426, (202) 502–6460.

SUPPLEMENTARY INFORMATION: On October 10, 2008, the Edison Electric Institute (EEI) and the Nuclear Energy Institute (NEI) filed a joint motion for an extension of time to file comments in response to the Commission’s Order on Proposed Clarification issued September 18, 2008, in the above-referenced proceeding. (*Mandatory Reliability Standards for Critical Infrastructure Protection*, 124 FERC ¶ 61,247 (2008)

(Proposed Clarification)). EEI and NEI state that because a majority of their members will be required to implement CIP Reliability Standards and NRC cybersecurity requirements in accordance with the clarification to be issued in this docket and because of the complex of the issues addressed in the Proposed Clarification, additional time is needed to submit well-developed comments.

Upon consideration, notice is hereby given that an extension of time for filing comments is granted to and including November 3, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–24630 Filed 10–17–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR**Wage and Hour Division****29 CFR Parts 3 and 5**

RIN 1215–AB67

Protecting the Privacy of Workers: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

AGENCY: Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: In this proposed rule, the Department of Labor (Department or DOL) proposes to revise regulations issued pursuant to the Davis-Bacon and Related Acts and the Copeland Anti-Kickback Act to better protect the personal privacy of laborers and mechanics employed on covered construction contracts.

DATES: Comments must be submitted on or before November 19, 2008.

ADDRESSES: You may submit comments, identified by RIN 1215–AB67, by either one of the following methods:

- *Electronic comments, through the federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Regulatory Information Number (RIN) identified above for this rulemaking. Comments

received will be posted to <http://www.regulations.gov>, including any personal information provided. Because we continue to experience delays in receiving mail in the Washington, DC, area, commenters are strongly encouraged to transmit their comments electronically via the federal eRulemaking Portal at <http://www.regulations.gov> or to submit them by mail early. For additional information on submitting comments and the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to the federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Richard M. Brennan, Director, Office of Interpretations and Regulatory Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693-0051 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division (WHD) District Office. Locate the nearest office by calling our toll-free help line at (866) 4USWAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD's Web site for a nationwide listing of WHD District and Area Offices at: <http://www.dol.gov/esa/whd/america2.htm>.

SUPPLEMENTARY INFORMATION:

I. Electronic Access and Filing Comments

Public Participation: This notice is available through the **Federal Register** and the <http://www.regulations.gov> Web site. You may also access this notice via the WHD home page at <http://www.dol.gov/esa/whd/regulations/DBRA2008.htm>. To comment electronically on federal rulemakings, go to the federal eRulemaking Portal at <http://www.regulations.gov>, which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the

Federal Register. Please identify all comments submitted in electronic form by the RIN docket number (1215-AB67). Because of delays in receiving mail in the Washington, DC area, commenters should transmit their comments electronically via the federal eRulemaking Portal at <http://www.regulations.gov>, or submit them by mail early to ensure timely receipt prior to the close of the comment period. Submit one copy of your comments by only one method.

Request for Comments: The DOL requests comments on all issues related to this notice of proposed rulemaking. This proposed rule, if implemented as a final rule, will enhance the privacy of workers and reduce paperwork requirements. The changes will not result in additional compliance costs for regulated entities.

II. Discussion of Changes

Summary of Pertinent Laws: Section 1 of the Davis-Bacon Act (DBA), as amended, 40 U.S.C. 3141 requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. The DBA requires contractors or their subcontractors to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character as determined by the Secretary of Labor. Regulations in 29 CFR part 5 contain the Davis-Bacon and Related Acts required contract clauses, and descriptions and interpretations of the labor standards requirements.

The Copeland Anti-Kickback Act, 40 U.S.C. 3145, requires, among other things, that contractors and subcontractors performing work on most federally financed or assisted construction contracts furnish weekly a statement with respect to the wages paid each worker during the preceding week. See 29 CFR 3.3(b), 3.4. Contractors must submit weekly a copy of all payrolls to the federal agency contracting for or financing the construction project, if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the contracting agency. 29 CFR 5.5(a)(3)(ii)(A). 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 and Related Act prevailing wage rate for the work performed must accompany the payroll. *Id.* 3.3(b), 5.5(a)(3)(ii)(B). Regulations implementing the Copeland Act are contained in 29 CFR parts 3 and 5.

In addition to the statutory authorities above, Reorganization Plan No. 14 of 1950 conferred upon the Secretary of Labor the authority to coordinate the administration and enforcement of the labor standards provisions of the above laws by the federal agencies providing the federal funding or assistance for the covered construction activities. See 5 U.S.C. Appendix.

The Secretary delegated her authority under the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276c; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831, the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327, *et seq.* to the Assistant Secretary for Employment Standards Administration. See Secretary's Order 01-2008, issued May 30, 2008, and published in the **Federal Register** on June 6, 2008 (73 FR 32424).

Privacy Protections: Changes are proposed in the contract labor standards clauses that are required to be included in federally funded and assisted construction contracts to protect the privacy of workers by reducing the scope of information required in certified payrolls provided weekly to appropriate federal agencies. The proposed regulatory changes would eliminate social security numbers and home addresses from documents that are provided weekly to non-employing government agencies, contractors, subcontractors, applicants, sponsors, and/or owners.

The current regulations for the Davis-Bacon and Related Acts (DBRA), 29 CFR part 5, require that certified payrolls be provided to the contracting government office for each week of work: "The payrolls submitted shall set out accurately and completely all of the information required, including "name, address, and social security number of each such worker* * * ." 29 CFR 5.5(a)(3)(i), (ii). These requirements flow down to subcontractors as well. *Id.* 5.5(a)(6). Stakeholders in the regulated community have noted concerns with requiring private information like individual workers' social security numbers and addresses on the required payroll submissions.

There is no statutory requirement that the Department require social security numbers or addresses on certified payrolls. In the 1980s, the Employment Standards Administration proposed

eliminating the requirement for weekly submission of the certified payrolls altogether. The final rule was successfully challenged by the American Federation of Labor—Congress of Industrial Organizations (AFL—CIO) as eliminating an important compliance monitor. See *Building & Const. Trades' Dept., AFL—CIO v. Donovan*, 712 F.2d 611 (DC Cir. 1983). The court held that the Copeland Act required covered contractors and subcontractors performing work on most federally financed or assisted construction contracts to furnish weekly a statement with respect to the wages paid each worker during the preceding week. Importantly, however, the court noted that there was no specific requirement for what individualized wage information for each covered worker was necessary on the certified payroll submissions. See *Id.* at 633.

The requirements for including social security numbers and home addresses also does not comport with recent guidance on limiting the use of personally identifying information, nor the Department's interests in protecting workers' privacy and preventing identity theft. On May 22, 2007, the Office of Management and Budget issued a Memorandum on "Safeguarding Against and Responding to the Breach of Personally Identifiable Information." Under the memo, government agencies are to reduce "the volume of collected and retained [personal identifying] information to the minimum necessary; [and limit] access to only those individuals who must have such access." OMB Memorandum M—07—16 at 2. The Department of Labor's own Guidelines on the Protection of Personal Identifiable Information (PII), define PII as including "name, address [and] social security number" and direct that DOL employees and contractors to safeguard the information. See DOL Guidance at <http://www.dol.gov/dol/ppii.htm>. "Because DOL employees and contractors may have access to personal identifiable information concerning individuals * * *, we have a special responsibility to protect that information from loss and misuse." *Id.*

Congress has also focused on protecting the privacy interests of workers in legislation, including for example, the Privacy Act, and the Health Insurance Portability and Accountability Act (HIPAA). Likewise, a number of federal courts have previously recognized concerns that any potential release of certified payrolls has substantial personal privacy implications. For example, courts have held that the release of workers' names,

addresses, and social security numbers on Davis-Bacon payroll records under the Freedom of Information Act constitutes a clearly unwarranted invasion of the workers' privacy. See *Sheet Metal Workers Int'l Ass'n, Local No. 19 v. U.S. Veterans Affairs*, 135 F.3d 891 (3d Cir. 1998) (disclosure of names, social security numbers, or addresses would constitute unwarranted invasion of privacy); *Sheet Metal Workers Int'l Ass'n, Local 9 v. U.S. Air Force*, 63 F.3d 994 (10th Cir. 1995) (holding release of names alone violated substantial privacy interest); *Painting Indus. Of Haw. Mkt. Recovery Fund v. United States Dep't of Air Force*, 26 F.3d 1479 (9th Cir. 1994) (names and addresses); *Painting & Drywall Work Preservation Fund v. HUD*, 936 F.2d 1300 (DC Cir. 1991) (same); *Hopkins v. HUD*, 929 F.2d 81 (2d Cir. 1991) (same).

With regard to addresses of covered construction workers, it should be noted that the Department has for some time provided for limitations on mandatory weekly disclosures on certified payrolls. The instructions to WHD's optional Form WH—347, which is a model for certified payroll submissions, currently specifies that addresses are only required for the first time the laborer or mechanic performs work on the contract and whenever there is a change of address. The proposal will bring the regulatory provisions in line with the Department's information collection needs.

The Department believes government agencies can ably enforce the requirements of the Copeland Act and Davis-Bacon and Related Acts, without needlessly continuing to expose workers to potential identity theft from weekly transmission of personally identifiable information on payroll records. Construction workers' addresses and social security numbers will continue to be required to be maintained by construction contractors and subcontractors, and government agencies responsible for ensuring compliance with these contract provisions and the WHD will continue to be able to access the social security numbers and addresses of employees from the contractor or subcontractor if necessary for purposes of an audit or investigation, 29 CFR 5.5(a)(3)(i), (iii). For example, certified payrolls are not provided weekly under the Service Contract Act. Consequently, the Department believes that elimination of the weekly submissions of construction workers' social security numbers and address information will not be a barrier to effective enforcement. Accordingly, for the forgoing reasons, it is proposed that section 5.5(a)(3)(ii) of title 29 of the

CFR be revised to eliminate the requirement of social security numbers and addresses on weekly submissions of detailed payrolls to the appropriate federal agency. After detailed review of the Copeland Act and consideration of the regulation in accordance with the Paperwork Reduction Act, the Department has determined that the statutory requirement to furnish weekly a detailed payroll with respect to the wages paid each employee during the preceding week can be satisfied by a weekly submission of a payroll without this information. This change is in keeping with the Administration's objective of protecting the privacy interests of this nation's workers and reducing reporting burdens imposed on the public. Importantly, the proposed regulation would still require that the addresses and social security numbers of covered workers be maintained and made available to government agencies upon request to permit government agencies to investigate compliance with the requirements of the Davis-Bacon and Related Acts. The Department also requests input on whether it would be appropriate, as an alternative to eliminating personal addresses altogether from certified payroll submissions, to instead require that the addresses of subcontractor personnel (and any changes of address) be provided to the contractor (or other entity) in direct privity with the government, but not included in weekly submissions.

In addition, WHD's optional Form WH—347, which is a model for certified payroll submissions, will be amended to reflect these requirements and is the subject of a Paperwork Reduction Act notice as discussed more fully below.

The Department also proposes two minor changes to the regulations to reflect current practices. The first of these would eliminate references in the regulations to Form WH—348, as the agency no longer sponsors the form. See 29 CFR 3.3(b). The information previously presented on Form WH—348 appears on Form WH—347 and was duplicative. In addition, the proposed rule revises how interested parties may obtain Form WH—347, as the form is no longer available for purchase through the Government Printing Office. See 29 CFR 3.3(b) and 5.5(a)(3)(ii)(A).

III. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing

collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. See 44 U.S.C.

3506(c)(2)(B); 5 CFR 1320.8. Persons are not required to respond to the information collection requirements as contained in this proposal unless and until they are approved by the OMB under the PRA at the final rule stage.

Purpose and Use: The Copeland Act requires contractors and subcontractors performing work on most federally financed or assisted construction contracts to furnish weekly a statement with respect to the wages paid each worker during the preceding week. See 40 U.S.C. 3145; 29 CFR 3.3(b), 3.4. Contractors must submit weekly a copy of all payrolls to the federal agency contracting for or financing the construction project, if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the contracting agency. 29 CFR 5.5(a)(3)(ii)(A). 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 prevailing wage rate for the work performed must accompany the payroll. *Id.* 3.3(b), 5.5(a)(3)(ii)(B). Contractors must also maintain these records for three years after completion of the work. *Id.* 3.4(b), 5.5(a)(3)(i).

More specifically, the current regulations require contractors performing work on projects subject to Davis-Bacon Act provisions to retain the name, address, social security number, correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Davis-Bacon Act section 1(b)(2)(B)), daily and weekly number of hours worked, deductions made, and actual wages paid to each worker on the contract. *Id.* 5.5(a)(3)(i). Whenever the Secretary of Labor has found under 29 CFR 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 Davis-Bacon Act 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 anticipated or actual costs incurred in providing such benefits. *Id.* 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. *Id.* The Department proposes to remove the regulatory requirement that the weekly payroll submitted to the contracting agency contain each worker's social security number and address. The proposal does not remove the requirement for worker addresses and social security numbers to be retained in records maintained by the contractor or subcontractor. *Id.* 5.5(a)(3)(i). See also *Id.* 5.5(a)(6). Government contracting officials and WHD staff use the records maintained by contractors and subcontractors as well as the weekly certified payrolls to verify payment of the required wages for the work performed.

The Department has developed optional use Form WH-347, Payroll Form, which contractors may use to meet the payroll reporting requirements. *Id.* 3.3(b), 5.5(a)(3)(ii)(A). The form contains the basic payroll information that contractors must furnish each week they perform any work subject to Davis-Bacon Act provisions. The contractor also completes, dates, and signs a statement on the reverse side of the form to meet the certification requirement. The contractor submits the completed form weekly to the contracting agency. 29 CFR 5.5(a)(3)(ii)(A). The contractor may substitute copies of its payroll containing all of the required information and provide the required certification. *Id.*

Information Technology: In accordance with the Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, the WHD has posted Form WH-347 on the Internet (<http://www.dol.gov/esa/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, not

to the Department. 29 CFR 5.5(a)(3)(ii)(A). In 2004, WHD issued a letter to the U.S. Army Corps of Engineers and the Federal Highway Administration advising that the submission of electronic signatures satisfied the requirements of the Copeland Act and its regulations. It is the Department's understanding that some agencies have set up systems to gather these records electronically and the Department encourages these and other initiatives to increase efficiency and requests comments on any additional methods to improve efficient compliance with the certified payroll requirements.

Similarly, 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 the payroll data requirements. 29 CFR 5.5(a)(3)(ii)(A).

Public Burden Estimates: This proposed rule introduces no new information collection requirements nor proposes any substantive or material changes to the existing information collection requirements noted above. The Department, however, is proposing to remove the requirement to report an employee's social security number and address, which the Department estimates will reduce the average reporting time from an average of 56 minutes per response to 54 minutes per response.

The Department bases the following burden estimates for this information collection on agency experience, except as otherwise noted. F.W. Dodge Report data for the period June 1, 2007, through May 31, 2008, indicate there were 109,323 State and local construction projects and 3032 federal construction projects. The Department estimates that approximately 33 percent of State and local construction projects utilize federal funds, resulting in an estimated 36,077 State and local construction projects being subject to Davis-Bacon labor standards (109,323 projects × 33 percent). Added to the 3032 federal projects, this would be an estimated 39,109 annual projects subject to Davis-Bacon labor standards.

The Department estimates these projects have an average of 8 contractors or subcontractors, resulting in 312,872 individual contractor and subcontractor projects (39,109 projects × 8 contractors and subcontractors per project = 312,872 individual projects).

To yield the estimated number of respondents, the Department estimates that, on a per capita basis, each covered construction contractor annually works

on an average of four projects subject to Davis-Bacon Act provisions. Thus, 312,872 individual projects divided by 4 Davis-Bacon projects per contractor equals 78,218 respondents.

The Department also estimates that a typical contractor or subcontractor on average submits 23 certified payrolls per individual project. Thus, 312,872 individual projects multiplied by 23 weekly responses equal 7,196,056 total annual responses.

The 7,196,056 responses multiplied by 54 minutes (estimated time to complete Form WH-347 or its equivalent) equal 388,587,024 minutes or 6,476,450 hours (rounded).

Public Comments: Stakeholders have expressed concerns about requiring submission of personal identifying information, particularly social security numbers and personal home addresses, on the weekly payroll submissions. The proposed regulations would remove the requirement for workers' addresses and social security numbers to appear on payrolls submitted to contracting agencies; however, federal construction contractors will still be required to maintain this information in the payroll records the contractors maintain for projects subject to Davis-Bacon Act provisions.

The Department seeks additional public comments regarding the burdens imposed by information collections contained in this proposed rule. In particular, the Department seeks comments that: Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses. Commenters may send their views about these information collections to the Department in the same way as all other comments (*e.g.*, through the regulations.gov Web site).

An agency may not conduct an information collection unless it has a currently valid OMB approval and the Department has submitted the identified information collections contained in the proposed rule to the OMB for review

under the PRA under Control Number 1215-0149. *See* 44 U.S.C. 3507(d); 5 CFR 1320.11. While much of the information provided to the OMB in support of the information collection request appears in this preamble, interested parties may obtain a copy of the full supporting statement by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble or by visiting the <http://www.reginfo.gov/public/do/PRAMain> Web site.

In addition to having an opportunity to file comments with the Department, comments about the paperwork implications of the proposed regulations may be addressed to the OMB. Comments to the OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not toll-free numbers).

Please note that the current authorization for the Davis-Bacon Certified Payroll information collection expires April 30, 2009. On October 1, 2008, the Department published a routine Paperwork Reduction Act notice in the **Federal Register** seeking comments on the existing Davis-Bacon information collection requirements that are also the subject of this proposal. 73 FR 57153. Any comments submitted to the October 1 request will be reviewed in light of the current proposal.

IV. Executive Order 12866; Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility

This proposed rule is not economically significant within the meaning of Executive Order 12866, or a "major rule" under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act.

The Department believes that a reduction in the amount of information required on certified payrolls provided weekly under Davis-Bacon is a reduction in regulatory compliance costs. While some contractors may have to slightly reconfigure their systems to produce the revised version, most have access to computerized systems that can easily be revised to remove data. Those contractors who currently use the optional WH Form will actually have an overall decrease of total administrative costs.

Conclusion: The Department concludes that incorporating these changes into the Davis-Bacon regulations will not impose any

measurable costs on any private or public sector entity.

Furthermore, because the proposed rule will not impose any measurable costs on employers, the Department certifies that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the Department need not prepare an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

V. Unfunded Mandates Reform Act

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 *et seq.* For the purposes of the UMRA, the Department certifies that this rule does not impose any federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than \$100 million in any year.

VI. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, Aug. 10, 1999). This rule does not have federalism implications as outlined in E.O. 13132. The rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

VII. Executive Order 13175, Indian Tribal Governments

The Department has reviewed this rule under the terms of Executive Order 13175 and determined it did not have "tribal implications." The rule does not have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes." As a result, no tribal summary impact statement has been prepared.

VIII. Effects on Families

The Department certifies that this rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

IX. Executive Order 13045, Protection of Children

The Department has reviewed this rule under the terms of Executive Order 13045 and determined this action is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866 and it does not impact the environmental health or safety risks of children.

X. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council of Environmental Quality, 40 CFR 1500 *et seq.*, and the Departmental NEPA procedures, 29 CFR part 11, and determined that this rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XI. Executive Order 13211, Energy Supply

The Department has determined that this rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

XII. Executive Order 12630, Constitutionally Protected Property Rights

The Department has determined that this rule is not subject to Executive Order 12630 because it does not involve implementation of a policy "that has taking implications" or that could impose limitations on private property use.

XIII. Executive Order 12988, Civil Justice Reform Analysis

The Department drafted and reviewed this proposed rule in accordance with Executive Order 12988 and determined that the rule will not unduly burden the federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects

29 CFR Part 3

Government contracts, Labor, Paperwork, Law enforcement.

29 CFR Part 5

Government contracts, Labor, Paperwork, Law enforcement.

Signed at Washington, DC, this 14th day of October, 2008.

Victoria A. Lipnic,
Assistant Secretary, Employment Standards Administration.

Alexander J. Passantino,
Acting Administrator, Wage and Hour Division.

For the reasons set forth above, the Department proposes to amend Title 29, Parts 3 and 5 of the Code of Federal Regulations as follows:

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

1. The authority citation for Part 3 is proposed to be revised to read as follows:

Authority: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 3145; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.

2. Section 3.3 is amended by revising paragraph (b) to read as follows:

§ 3.3 Weekly statement with respect to payment of wages.

* * * * *

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

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PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

3. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.*; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.*; and the laws listed in 5.1(a) of this part; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.

6. Section 5.5 is amended by revising paragraph (a)(3)(ii)(A) to read as follows:

§ 5.5 Contract provisions and related matters.

(a) * * *

(3) * * * (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that social security numbers and home addresses shall not be included on any weekly transmittals. The required weekly information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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