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: Final rule.

SUMMARY: In this final rule, the Department of Labor (Department or DOL) revises 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: *Effective Date:* January 18, 2009, except § 5.5(a)(3)(ii)(A) and (a)(3)(ii)(B)(1), which contain information collection requirements that have not been approved by OMB. The Wage and Hour Division will publish a document in the **Federal Register** announcing the effective date. See **SUPPLEMENTARY INFORMATION** for dates of applicability.

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. Background

The Department published a Notice of Proposed Rulemaking in the **Federal Register** on October 20, 2008 (73 FR 62229), inviting comments until November 19, 2008, on revisions to update certain regulatory standards to better protect worker privacy for contracts covering federally financed and assisted construction.

II. Summary of Comments

The Department received 37 total comments on the NPRM from a variety of individuals (7), trade and professional associations (6), labor unions (12), governmental entities (5), Members of Congress (3 letters signed by a total of 16 members), law firms (2), and others (2).

Four commenters generally supported the proposed rule. Of the four, three cited protecting the employee's privacy as the major factor for their support. The fourth comment expressed support for the Department's goals of increased privacy and decreased burden through electronic reporting but noted that the commenter had business interests coextensive with such an initiative. One of these commenters, a state government entity, believed the employer is in a better position to protect an employee's personal information than government agencies enforcing prevailing wage requirements.

The agency also received from several trade associations and a government agency more specific comments in support of protecting worker privacy and/or reducing unnecessary burdens, but suggesting alternatives to the proposal. One commenter from a trade association supported the Department's efforts to protect workers' privacy under the proposed rule. The commenter, however, raised concerns that the proposed rule could be read to prohibit subcontractors from providing addresses and social security numbers in submissions to the prime contractors, even though prime contractors continue to have responsibility for compliance of subcontractors under the regulations. As a result, the commenter recommended that the Department proceed with the proposed rule, but clarify that ''prime contractors may continue to require subcontractors to provide such information to the prime contractors for its own records, without submission to the government.'' The commenter also recommended the government expand efforts allowing electronic payroll submission systems, to ensure the systems are cost-efficient, reliable, and user-friendly.

One commenter from a federal government agency (United States Department of Defense—Department of the Navy) suggested that if address and social security information are totally unavailable to contracting agencies, there could be an impediment for enforcement. The commenter generally endorsed requiring contractors and subcontractors to maintain and provide addresses and social security numbers to the government upon request and/or that the prime contractor be required to compile social security numbers and up-to-date addresses from subcontractors even if they are not included in the currently-required weekly certified payrolls. The commenter suggested adding explicit language to the regulations to make it clear that ''failure to provide such information on a timely basis would carry the same regulatory consequences as failure to provide timely certified payroll reports.'' The commenter also strongly supported the submission of certified payroll by electronic means to reduce burden.

A number of other commenters agreed that there were privacy issues with certified payroll requirements, particularly with regard to the use of social security numbers, but raised concerns that lack of access to addresses and social security numbers might work as a hardship for those monitoring compliance. For example, some noted that removing addresses from certified payrolls may impact the ability of agencies to locate and interview workers for the purposes of auditing prevailing wage compliance on contracts or disbursing back wages to employees following a finding of their employer's non-compliance. Four of these commenters supported the continued need for some level of an individual worker identification number and recommended the Department of Labor consider alternatives—three suggested using the last four digits of the social security number and one suggested creating a unique employee identification instead.

A majority of the comments raised concerns that the proposed changes could result in difficulties in enforcing the applicable prevailing wage laws because weekly submissions of certified payrolls containing social security numbers and addresses for individual workers are useful to government investigators and auditors in ensuring compliance with the Davis-Bacon and Related Acts and/or Copeland Act. Some commenters also noted that contractors and subcontractors do not always cooperate with government agencies in prevailing wage compliance

audits or investigations. Additional concerns raised by the commenters include: Prevailing wage enforcement at the state and federal level could become more costly; the change could result in increased opportunities for fraud by contractors and subcontractors; the rule is unnecessary because there are already safeguards in place to protect worker privacy; and/or a superior solution would be to require better protection (e.g., encryption of data) of the certified payrolls by government agencies and the regulated community.

Most comments in opposition (19) were simply blanket criticisms of the proposed changes with little to no analysis. Twelve of these comments also argued that, because federal law generally prohibits the release of addresses and social security numbers, the proposed rule is not needed. Several of these commenters were members of Congress who requested that the Department extend the comment period. Notably, however, no other stakeholders in the regulated community requested an extension of the comment period. A number of other commenters in this group, and others below, criticized the length of the comment period, but still provided timely comments.

Several commenters expressed concerns that lack of individual identifying information could increase the time and effort necessary for government agencies to conduct prevailing wage investigations or audits. With regard to the privacy of workers, several commenters suggested the alternative of requiring the government and contractors to restrict the information to only those who need access. Several commenters suggested that government agencies and stakeholders should consider increasing electronic submission of certified payroll records to improve efficiency, but did not believe that the current process was a public burden or endangered worker privacy.

One commenter referenced the Department of Labor's Office of Apprenticeship and the need to have individual information to verify apprenticeship status for workers. The commenter was concerned that with only a name to compare, and not an address and social security number, there could be difficulties in verifying the identity of individual workers in apprenticeship programs. The commenter also suggested that reducing reporting requirements in general, even to protect privacy, may increase the chance unscrupulous contractors and subcontractors will be able to hide violations of prevailing wage requirements to the detriment of honest contractors and subcontractors. Several other commenters also suggested that without the current weekly reporting requirements, some contractors and subcontractors could find it easier to intentionally not comply with the prevailing wage laws.

One commenter stated that the proposed change erroneously places too much value on personal privacy over the government duty to enforce the Davis-Bacon Act. This commenter and others recommended that the Department focus on requiring government agencies to better protect personal identifying information rather than reduce reporting requirements. Several commenters also questioned the Department's assertion that this change will reduce public ''reporting burdens.''

One commenter (International Union of Operating Engineers) opposed the proposed rule because of concerns that the change could somehow result in ''misclassification of workers, underpayment of wages, fringe benefit abuses and illegal kickbacks on federal construction projects.'' This commenter also questioned the Department's statement that contractors will continue to be required to maintain employee addresses and social security numbers, the Department's reliance on *Building & Construction Trades Department* v. *Donovan*, 712 F.2d 611 (D.C. Cir, 1983), and whether there was any evidence that government agencies and contractors are unable to appropriately protect personal information currently.

One state government agency (Illinois Department of Labor) raised concerns that the changes could hinder efforts to enforce applicable laws as well as its own use of home addresses and social security numbers in state investigations. The agency also recommended the Department consider requiring additional privacy protections from government agencies on releasing personal identifying information rather than reduce weekly reporting requirements.

One commenter from a state Construction Trades Council noted a specific situation in which certified payrolls could have helped to verify appropriate payment of prevailing wages, but the payrolls turned out to be unhelpful because of contractor errors. In addition, the commenter was concerned that the proposed changes could cause budget issues as state agencies could have greater difficulty and costs in monitoring prevailing wage compliance and conducting investigations. Other commenters also suggested that any reduction in reporting burden as a result of the proposed rule could be offset by the potential for an increase in time spent by contractors and subcontractors in responding to subsequent investigations.

One commenter, on behalf of its building and construction trade clients, opposed the proposed rule because of concerns that the comment period was too short, questioned whether there was any need to better protect worker's privacy, and disagreed that there would be any actual reduction in burden. The commenter suggested that the 30-day comment period did not provide enough time under the Administrative Procedure Act. Finally, the commenter noted the specific characteristics of the construction industry could make it more likely workers will not receive prevailing wages and/or fringe benefits without government having access to personally identifying information on weekly certified payrolls.

The Building and Construction Trade Department, AFL-CIO or ''BCTD'' submitted comments on behalf of 13 national and international organizations, and more than 300 State and Local Building and Construction Trades Councils. In addition to making a number of points similar to those discussed above, BCTD suggested that the proposed rule did not meet the requirements of a memorandum advising federal agencies that significant final regulatory changes should generally be implemented before November 2008. BCTD also: (1) Echoed concerns of other commenters that the Department misread the *Building & Construction Trades Department* v. *Donovan*, 712 F.2d 611 (D.C. Cir, 1983) opinion; (2) stated it did not believe the current requirements were ''unnecessarily intrusive and clearly outweigh the privacy concerns cited by DOL''; (3) noted the Office of Management and Budget did not mandate reductions in the collection of social security numbers and home addresses on certified weekly payrolls; (4) suggested the changes could ''embolden unscrupulous contractors and subcontractors to disregard their obligations;'' and (5) stated it did not believe the reasons offered by the Department ''individually or collectively'' supported the proposal.

III. 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. Under the regulations, 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.

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).

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, 40 U.S.C. 3141; the Copeland Act, 40 U.S.C. 3145; Reorganization Plan No. 14 of 1950; the Tennessee Valley Authority Act, 16 U.S.C. 831; and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701, *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).

IV. Response to Comments and Discussion of Final Rule

The Department appreciates the many constructive suggestions and criticisms of the proposal, and it has carefully considered all of the comments, analyses, and arguments made for and against the proposed changes.

The Department has determined that its experience in enforcing the requirements of the Davis-Bacon and Related Acts and Copeland Act do not require weekly submissions to the government (in the form of certified payroll statements) to include complete social security numbers and home addresses for individual workers (alongside the workers' specific weekly income and benefits amounts as currently required). The Department finds that this information is personal to the worker and that any unnecessary disclosures and submittal to contractors, other entities, and/or the government creates an exposure to identity theft and the invasion of privacy for workers. The Department believes workers in the construction industry performing work on a covered project under the Davis-Bacon and Related Acts are entitled to have their personal addresses and social security numbers kept as private as possible.

In fact, the requirements for including complete social security numbers and home addresses on certified payrolls does not comport with recent efforts to limit the use of personally identifying information in government generally. For example, the President recently issued revised Executive Order No. 9397 on November 18, 2008, which amended a 1930s directive mandating the use social security numbers in interactions with government to make it permissible instead of mandatory: ''It is the policy of the United States that Federal agencies should conduct agency activity that involve personal identifiers in a manner consistent with protection of such identifiers against unlawful use.''

Moreover, reducing the collection of information on certified payrolls is in accord with Office of Management and Budget guidelines. As noted in the NPRM, the Office of Management and Budget issued a Memorandum in 2007 directing government agencies 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. Although several commenters disagreed, the Department reads the Memorandum as clearly both a directive to safeguard information and to reduce collection of such information where possible.

Indeed, other government agencies have adopted privacy protection policies and noted the very real dangers of identity theft. As stated by the U.S. Social Security Administration: ''Identity theft is one of the fastest growing crimes in America. A dishonest person who has your Social Security number can use it to get other personal information about you. Identity thieves can use your number and your good credit to apply for more credit in your name. Then, they use the credit cards and do not pay the bills. You may not find out that someone is using your number until you are turned down for credit or you begin to get calls from unknown creditors demanding payment for items you never bought. Someone illegally using your Social Security number and assuming your identity can cause a lot of problems.'' *See http://www.ssa.gov/pubs/10064.html.*

As noted in more detail in the NPRM, Congress has also focused on protecting the privacy interests of workers (*see, e.g.,* the Privacy Act, the Health Insurance Portability and Accountability Act (HIPAA)) and courts have specifically noted the privacy issues regarding public disclosures of certified payrolls under the Freedom of Information Act. *See, e.g., 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 on certified payrolls would constitute unwarranted invasion of privacy); *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).

The Department believes that the final rule strikes the appropriate balance between the ability to enforce the law and the need to protect the privacy interests of workers. Some commenters expressed concern that the proposed change may impact enforcement or increase costs. The Department, however, did not find the comments submitted compelling nor does the Department's enforcement experience suggest that continued effective enforcement and protecting the privacy interests of workers are mutually exclusive goals. The Department also

has determined that the added benefits of reducing burdens to the regulated community and government agencies and providing appropriate flexibility to Federal agencies, State agencies, and covered contractors and subcontractors argue in favor of the change.

In reviewing the comments, however, the Department has decided to make several modifications to the proposal. In order to address the concern that eliminating access to social security numbers could work as a hardship for those monitoring compliance in circumstances where there are multiple employees with the same names, the Department will continue to require an individual identifying number on certified payrolls. The Department will require that, in accord with suggestions received from the public, that certified payrolls continue to include a line item for contractors and subcontractors to include an individual identifying number for tracking purposes, which in virtually all cases, should be the last four digits of the workers' social security number. This will substantially limit the possibility of identity theft while still ensuring workers can be separately identified effectively by auditors and investigators.

In addition, contractors and subcontractors will be required to maintain and provide data to investigators demonstrating the appropriate payment of prevailing wages, including complete social security numbers and current home addresses for laborers and mechanics employed on covered contracts. This obligation is identified in the current regulations and will remain unchanged. Thus, government agencies and the Department of Labor remain entitled to request or review all relevant payroll information, including the addresses and social security numbers of individual workers, from contractors or subcontractors. In addition, prime contractors will continue to have an obligation to assist the government in auditing or investigating compliance, including assisting the government in obtaining records from subcontractors if necessary. In order to better delineate the obligations and responsibilities of contractors and subcontractors to cooperate and assist in audits or investigations regarding prevailing wage requirements, the Department has adopted the suggestion of one of the commenters to make this more explicit in the regulations as part of the final rule.

With regard to the suggestion that the Department instead require better safeguards of the information, the Department believes contractors, subcontractors and government agencies (as well as applicants, sponsors, and owners where they are involved in a covered project) have a general obligation to safeguard the personally identifying information of workers. The Department, however, does not believe it would be appropriate to require that certified payrolls be subject to some sort of one-size-fits-all protection such as encryption or restriction to use or review by specific persons only. Each government agency, contractor, and subcontractor may have different methods of safeguarding information, and the Department does not believe it is in a position to mandate any particular method that will be appropriate to all situations. In general, the Department believes the best way to prevent the misuse or loss of personally identifying information is not to require contractors, applicants, sponsors, owners, or government agencies to disseminate it unless necessary for a compelling government interest. To the extent information must be gathered to ensure prevailing wage law compliance, the individual government agencies and regulated community are in the best position to decide how to manage the information received and request additional information so personally identifying information is not lost or misused. As such, the Department has declined to add or substitute language mandating any particular type of security for certified payrolls.

With regard to concerns that any reduction in reporting will lead to fraud or less compliance or added costs, the Department does not believe the comments provide any concrete basis to support this allegation. Certified payrolls will continue to include all required wage and hour data, names and a personal identification number. Under the revised regulations, contractors and subcontractors will certify that they are maintaining the remaining information. The revised regulations require contractors and subcontractors to provide such information on request. Thus, the revised regulations do not limit the ability of investigators or auditors to get the appropriate information; rather, the revised regulations simply prevent the indiscriminate free-flow of personally identifiable information when the government has no need for it. In addition, most contractors and subcontractors on DBRA-covered projects make good faith efforts to abide by the law; violations often derive from a misunderstanding rather than intent. The Department does not believe this will change simply because the regulated community is no longer required to report their employees' home addresses and full social security numbers every week on certified payrolls. Moreover, contractors and subcontractors that falsify certify required certifications will continue to be subject to possible civil and criminal prosecution. *See* 29 CFR 5.5(a)(ii)(D).

With regard to suggestions that there is no evidence this change is necessary, the Department disagrees. Although the Department is unaware of any organized identity theft activity utilizing certified payrolls, there are daily examples of accidental disclosures of personally identifying information or intentional theft of such information. For example, on December 5, 2008, the Wall Street Journal reported that a state-level agency accidentally put the Social Security numbers of about 250,000 job seekers on the Internet for 19 days before a separate state agency noticed the security breach. The federal government has also lost computers or data containing significant amounts of personally identifying information (PII), including social security numbers and personal addresses. *See, e.g., http://www.usa.gov/veteransinfo.shtml* (discussing 2006 PII data breaches/computer thefts). Similarly, cities and labor unions have had identity theft occur in circumstances where personally identifying information is required to be disclosed to labor unions by the government. *See, e.g., Bell* v. *Michigan Council 25*, No. 246684, 2005 WL 356306 (Mich. App. Feb. 15, 2005) (City of Detroit employees and members of AFSCME Local 1023 sued union local and union treasurer for negligence when they suffered identity theft at hands of union treasurer's daughter). While it is unquestionable that government uses PII for legitimate purposes in many instances, there is certainly an interest in reducing the gathering and storing of PII to prevent the opportunity for identity theft and invasion of privacy. Moreover, the burden reduction identified below for the regulated community suggests there are added benefits that outweigh any alleged costs.

Several commenters questioned the Department's interpretation of *Building & Const. Trades' Dept., AFL–CIO* v. *Donovan*, 712 F.2d 611 (D.C. Cir. 1983). The court in that case 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. As noted in the NPRM, the Department does not believe there is any statutory requirement that the Department require social security numbers or addresses on certified payroll and a clear reading of the statutory law and the decision is that the Department has discretion for the specific requirements of weekly disclosures as long as the disclosures provide an appropriate amount of information. The Department therefore disagrees with the commenters' alternative characterization of the court's decision.

Similarly, one commenter's suggestion that there is some impropriety to the proposal based on the 30-day comment period under the Administrative Procedure Act is mistaken. The APA does not specify a particular comment period. For the very minor nature of the proposal in this case, 30 days is not overly short. Moreover, only a few commenters (all of whom were members of Congress) requested an extension at all, so there is no evidence the short period limited the public in their attempts to provide meaningful comments.

The Department also does not find that a May 2008 Memorandum from the White House Chief of Staff limits its right to finalize this rule as commenters suggested. The Memorandum specifically states that it was not intended to alter or impede government agencies in performing their responsibilities and that part of its purpose is to ensure agencies design regulations to minimize costs and maximize benefits. Therefore, the Department notes the May 2008 Memorandum does not preempt the 2007 OMB Memorandum M–07–16 discussed above nor the President's revised Executive Order No. 9397 of November 18, 2008—both of which promote agency compliance with limiting the collection and use generally of personally identifying information.

With regard to addresses of covered construction workers, it should be noted that this is not a substantial change to the current certified payroll requirements. 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 final rule further limits that disclosure slightly by bringing the regulatory provisions in line with information collection needs—requiring contractors and subcontractors to make addresses and/or social security numbers of covered workers available to DOL or other government agency investigators and auditors upon request but not in weekly reports that are disseminated to a wider audience.

Accordingly, after a detailed review of the comments provided and consideration of the regulation in accordance with statutory requirements, the Department has determined that the 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 home addresses and complete social security numbers. The regulatory changes merely remove the requirement to include a complete social security number and home address of each individual worker from documents that are provided weekly to the workers' non-employing government agencies, contractors, subcontractors, applicants, sponsors, and/or owners.

This change is in keeping with the Administration's overall objective of protecting the privacy interests of this nation's workers and reducing reporting burdens imposed on the public. Also, the Department believes the current requirement creates a burden on contractors and the government to safeguard copies of certified payrolls containing this type of personally identifying information regarding each week of every covered project. For example, one commenter noted a frequent need to redact just this sort of information in response to Freedom of Information Act (FOIA) requests. By removing this information from certified payrolls, the government will have less information to redact in responding to entities requesting copies of certified payrolls under the FOIA, which will save the government time and costs as well as improve speed in responding to such requests from the public.

Importantly, the final regulation does not change the requirement 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 and/or Copeland Act, 29 CFR 5.5(a)(3)(i), (iii). In response to commenters noting some difficulty with retrieving this type of information upon occasion, however, the Department is providing explicitly in the revised text of the regulatory provisions (which is incorporated into covered construction contracts) that contractors and subcontractors must maintain this information and make it available upon request to government investigators and auditors.

Two implementing changes are needed to other aspects of the regulations to bring them in line with the final rule. WHD's optional Form WH–347, which is a model for certified payroll submissions, is to be amended to reflect these requirements and was the subject of a Paperwork Reduction Act notice as discussed more fully below. A conforming change to the certification required for certified payrolls is also included in the final rule regulatory text (changing the certification to that required to be provided by the final rule).

The Department received no comments on two issues noted in the proposal and so is implementing the two ministerial changes to reflect current practices. The first of these eliminates 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 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).

Also, because the changes being made are minor and result in a net reduction in burden, the Department has determined that a 30-day effective date is appropriate. *See* section XVI below.

V. Paperwork Reduction Act

The Office of Management and Budget (OMB) has assigned control number 1215–0149 to the Davis-Bacon Certified Payroll information collection. In accordance with the Paperwork Reduction Act of 1995 (PRA), the October 20, 2008, NPRM solicited comments on the proposed revisions to this information collection. 44 U.S.C. 3506(c)(2). The Department also submitted a contemporaneous request for OMB review of the proposed revisions, in accordance with 44 U.S.C. 3507(d). On October 28, 2008, the OMB issued a notice that continued the current authority for existing information collection requirements. The OMB also asked the Department to resubmit the information collection request upon promulgation of a final rule and after considering public comments on the NPRM. While the Department received comments regarding substantive aspects of the information collection, no comments directly addressed the methodology for

estimating the public burden under the PRA.

Under the final rule, the contractor's staff must still perform a search/research function to pull each employee's social security number from its records to encode the last four digits as an identifier, and the burden computation for the final rule must include all the time involved in searching for and compiling the required data. Thus, there will be less of a reduction in burden for omitting portions of the Social Security numbers that are not put onto the weekly certified payroll report forms. DOL therefore is amending the burden reduction in the estimate from the original two minutes to a one minute reduction (per response). Accordingly, the Department has revised its estimate that each response to this information collection takes approximately 54 minutes to 55 minutes. In order to facilitate a full understanding of all the issues involved and avoid unnecessary duplicative statements, public comments addressing the information collection requirements imposed by this final rule are discussed in the comment summary portion of this preamble.

Interested parties may obtain a prototype Davis-Bacon Certified Payroll, Form WH–347, via the Wage and Hour Division's Forms Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm*, by contacting the Wage and Hour Division at 1–866–4US–WAGE (1–866–487–9243), or by visiting a Wage and Hour Division District Office. A list of District Office addresses is available on the Internet at *http://www.dol.gov/esa/whd/america2.htm*. Form WH–347 is also available through the forms.gov Web site. While use of Form WH–347 is optional, it is mandatory for contractors performing on covered projects to provide the information specified in 29 CFR 3.3, 5.5(a)(3). Responses are not confidential; however, FOIA exemptions may allow for the redaction of certain information that respondents submit. In addition, the Department as well as contracting agencies use the information provided in administering the labor standards provisions of covered Federally financed or assisted construction projects. The information also may be used in administrative and legal proceedings.

Generally, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. 5 CFR 1320.8(b)(3)(vi). The Department has resubmitted the revised Davis-Bacon Certified Payroll information collection to the OMB for approval, and the Department intends to publish a notice announcing the OMB's decision regarding this information collection request. A copy of the information collection request can be obtained at *http://www.RegInfo.gov* or by contacting the Wage and Hour Division as shown in the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The terms of the existing information collection authorization will remain in effect until the OMB finally approves the new information collection request or this final rule takes effect on January 18, 2009, whichever date is later.

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.*

Under this final rule, the Department is only removing the regulatory requirement that the weekly payroll submitted to the contracting agency contain each worker's entire 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 may 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).

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. 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).

A number of commenters on the proposed rule noted that there were additional applications and methods to improve efficiency in satisfying regulatory requirements and all commenters who discussed the issue endorsed additional use of technology, including electronic filing of certified payrolls. It is the Department's understanding that Web-based certified payroll compliance solutions exist and that some agencies and contractors have set up systems to comply electronically already. While a number of commenters suggested that the Department further study and endorse these initiatives, the Department of Labor has determined that specific methods of implementing cost savings and efficiencies through more effective use of technology are best left to the contracting community and individual government agencies. DOL encourages all government agencies to review proposals to allow contractors to submit information electronically or through allowing access to an appropriate agency approved limited-access Web-based portal providing the required information and certification. The Department believes these efforts, if properly reviewed and implemented in accord with this final rule and data privacy requirements, will decrease burden, increase the efficient use of resources and better ensure timely submission of certified payrolls to improve compliance. The Department therefore supports agencies in exploring and implementing any additional methods to improve efficient compliance with the certified payroll requirements.

Public Burden Estimates: This final 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 removing the requirement to report an employee's entire social security number and home address weekly, which the Department estimates will reduce the average reporting time from an average of 56 minutes per response to 55 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 55 minutes (estimated time to complete Form WH–347 or its equivalent) equal 395,783,080 minutes or 6,596,385 hours (rounded).

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 rule to the OMB for review under the PRA. *See* 44 U.S.C. 3507(d); 5 CFR 1320.11. Please note that the current authorization for the Davis-Bacon Certified Payroll information collection expires April 30, 2009. On December 1, 2008, the Department's routine Paperwork Reduction Act notice for extension of the existing Davis-Bacon information collection requirements that are also the subject of this final rule closed. 73 FR 57153. No comments were received.

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

This 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 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 a 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.

VII. Unfunded Mandates Reform Act

This 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.

VIII. 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.

IX. 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.

X. 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.

XI. 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.

XII. 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 part 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.

XIII. 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.

XIV. 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.

XV. Executive Order 12988, Civil Justice Reform Analysis

The Department drafted and reviewed this final 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.

XVI. Dates of Applicability

The revisions to § 5.5(a)(3)(ii)(A) and (B)(1) of Part 5 shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after the effective date of this rule, which is January 18, 2009.

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 11th day of December 2008.

Victoria A. Lipnic,

Assistant Secretary, Employment Standards Administration.

Alexander J. Passantino,

Acting Administrator, Wage and Hour Division.

■ For the reasons set forth above, Title 29, Subtitle A of the Code of Federal Regulations is amended by amending parts 3 and 5 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 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. Amend § 3.3 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.

* * * * *

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.

■ 4. Amend § 5.5 paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B)(*1*) by revising 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 full social security numbers and home addresses shall not be included on weekly transmittals. 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 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. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request 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 them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) * * *

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

* * * * *

[FR Doc. E8–29886 Filed 12–18–08; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 147 and 165

[USCG–2008–0181]

Quarterly Listings; Anchorages, Safety Zones, Security Zones, Special Local Regulations, Regulated Navigation Areas, and Drawbridge Operation Regulations; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of expired temporary rules issued; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** of October 14, 2008, concerning expired temporary rules. The document contained an incorrect contact telephone number, an incorrect table entry, and an omission.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Ms. Lesley Mose, Office of Regulations and Administrative Law, telephone (202) 372–3863. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Program Manager, Docket Operations, telephone 202–366–5115.

Correction

In the **Federal Register** of October 14, 2008, in FR Doc. E8–23956, on page 60629, in the second column under **FOR FURTHER INFORMATION CONTACT**, correct the Office of Regulations and Administrative Law telephone number to read ''202–372–3863''; on the same page, in the table, remove the entry for Docket No. USCG–2008–0102; and on page 60630, in the table insert the entry for Docket No. USCG–2008–0402 reading ''Boca Grande, FL, Safety Zones (Parts 147 and 165), 6/7/2008'' in numerical order.

Dated: December 9, 2008.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

[FR Doc. E8–29736 Filed 12–18–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–8 and CP2009–9; Order No. 147]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a new international mail product to the Competitive Product List. This product is a contract between the United States Postal Service and Canada Post for inbound competitive services. It modifies and extends an existing agreement. The Commission's action is consistent with changes to applicable federal law and regulations and with a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with requirements in the law.

DATES: Effective December 19, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 73 FR 70681 (November 21, 2008).

The Postal Service seeks to add a new product identified as Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9) to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On November 13, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add the Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Bilateral Agreement) to the Competitive Product List.[1] The Postal Service asserts that the Contractual Bilateral Agreement is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–8.

The Postal Service contemporaneously filed notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that the Governors have established prices and classifications not of general applicability for inbound competitive services as reflected in the Bilateral Agreement. More specifically, the Bilateral Agreement, which has been assigned Docket No. CP2009–9, governs the exchange of Inbound Surface Parcel Post from Canada.

In support of its Request, the Postal Service filed a redacted version of the Governors' Decision establishing prices for the Bilateral Agreement. Attached to the Governors' Decision are proposed Mail Classification Schedule language; a redacted version of management's analysis of the Bilateral Agreement; certification of compliance with 39 U.S.C. 3633(a); certification of the Governors' vote;[2] and a Statement of Supporting Justification as required by 39 CFR 3020.32.[3] In addition, the Postal

[1] Request of United States Postal Service to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Agreement, November 13, 2008 (Request).

[2] *See* Attachment 1 to the Request.

[3] *See* Attachment 2 to the Request.