

**SUPPORTING STATEMENT FOR THE
INFORMATION COLLECTION REQUIREMENTS FOR
PROCEDURES FOR HANDLING DISCRIMINATION COMPLAINTS
UNDER FEDERAL EMPLOYEE PROTECTION STATUTES
29 CFR PARTS 24, 1979, 1980 and 1981 (November 2007)**

JUSTIFICATION

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

The Department of Labor, through the Occupational Safety and Health Administration (OSHA), is responsible for investigating alleged violations of whistleblower provisions contained in certain Federal laws that prohibit retaliatory action by employers against employees who report unsafe or unlawful practices. These whistleblower protections prohibit an employer from discharging or otherwise retaliating against an employee with respect to compensation, terms, conditions or privileges of employment because the employee engages in any of the activities specified in the particular statute as a protected activity. This information collection covers the whistleblower protection provisions under the following statutes: (1) Safe Water Drinking Act, 42 U.S.C. 300j-9(I); (2) Water Pollution Control Act, 33 U.S.C. 1367; (3) Toxic Substances Control Act, 15 U.S.C. 2622; (4) Solid Waste Disposal Act, 42 U.S.C. 7001; (5) Clean Air Act, 42 U.S.C. 7622; (6) Energy Reorganization Act of 1974, 42 U.S.C. 5851, (7) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610, (8) Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121 (AIR 21), (9) Sarbanes-Oxley Act, 18 U.S.C. 1514A, and (10) Pipeline Safety Improvement Act, 49 U.S.C. 60129.

Regulations at 29 CFR Part 24, 29 CFR Part 1979, 29 CFR Part 1980, and 29 CFR Part 1981 set forth the procedures for the handling of retaliation complaints under these Federal employee protection statutes. Any employee who believes that he or she has been retaliated against by an employer in violation of any of the subject statutes may file, or have another person file on their behalf, a complaint alleging such retaliation. These complainants are primarily employed by private or government employers. No particular form of complaint is required but, the complaint must be in writing and include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation.

Information under these Federal employee protection statutes is necessary for OSHA Officials to investigate complaints to determine if a violation has occurred.

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

This information is used by OSHA to determine the timeliness of the filing (complaints under these statutes, in order to be valid, must be filed within a certain time period after the occurrence

of the alleged retaliatory act) and provide information regarding the alleged retaliation. If this information was not collected, OSHA would not have sufficient knowledge to determine the timeliness of the complaint and initiate investigation of the alleged violation.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce the burden.

As noted in these regulations, no particular form of complaint is required, except it must be in writing. Most Regional and Area Offices of OSHA are equipped with fax machines which would permit complainants to fax their complaints to OSHA for investigation. In addition, a complaint may be filed electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use of the purpose described in Item 2 above.

OSHA is unaware of any other Federal requirements for this collection of information.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize the burden.

This collection does not impact small business or other small entities. This information is only available from a complainant and is the minimum necessary to determine the timeliness of the complainant and its scope so that an investigation can be conducted.

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

If this information was collected less frequently, valid complaints of retaliation may go uninvestigated and violations unremedied.

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

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

consistent with the pledge, or which unnecessarily impedes sharing data with other agencies for compatible confidential use; or

requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There is no prescribed frequency for collecting this information. Complainants provide information at their own initiative when they believe they have been retaliated against as a result of engaging in activity protected by the above acts. Information required in this standard is consistent with the above guidelines.

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

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

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

On August 10, 2007, the Department of Labor amended the regulations governing the employee protection ("whistleblower") provisions of Section 211 of the Energy Reorganization Act of 1974, as amended, ("ERA"), to implement the statutory changes enacted into law on August 8, 2005, as part of the Energy Policy Act of 2005 (72 FR 44956). The regulations also made the procedures for handling retaliation complaints under Section 211 of the ERA and the environmental whistleblower statutes listed in Part 24 as consistent as possible with the more recently promulgated procedures for handling retaliation complaints under other employee protection provisions administered by the Occupational Safety and Health Administration ("OSHA"), *see* 29 C.F.R. Parts 1979 – 1981.

This rule contained a reporting provision (filing a retaliation complaint, Sec. 24.103) which was previously reviewed and approved for use by OMB under 29 CFR 24.3 This rule did not make any material or substantive change to the approved collection of information.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), OSHA published a notice in the **Federal Register** on September 18, 2007 (72 FR 53266, Docket No. OSHA-2007-0071 requesting public comment on its proposed extension of the information collection requirements contained in the regulations containing procedures for handling discrimination complaints. This notice was part of a preclearance consultation program intended to provide those interested parties the opportunity to comment on OSHA's request for an extension by the Office of Management and Budget (OMB) of a previous approval of the

information collection requirements found in the above standards. The Agency received no comments in response to its notice to comment on this request.

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

No payments or gifts will be provided to the complainant.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No assurances of confidentiality are provided.

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

No sensitive information is requested.

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

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

- **Provides estimates of annualized costs to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Approximately 1,850 whistleblower complaints are filed annually with OSHA under all of the whistleblower protection laws that it administers, of which approximately 390¹ are complaints received under the subject whistleblower provisions (29 CFR Part 24, 29 CFR Part 1979, 29 CFR Part 1980, 29 CFR Part 1981). It is further estimated that placing each complaint in writing and detailing the facts surrounding the alleged retaliation would require approximately one hour to complete, which would total an annual burden for all of complaints of 390 hours.

There is no reliable way to estimate the cost to complainants. One method of estimating such cost might be to average their hourly wage rate multiplied by one hour, but because

¹Based on the number of complaints received during calendar year 2006.

complainants' wages range from minimum wage to more than \$100,000.00 a year, that average would be not be meaningful. Moreover, not all complainants are employed so there is no way to assess the cost of their time.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of hour burden shown in Items 12 and 14.)

· The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors, including system and technology acquisition, expected useful life on capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information, such as purchasing computers and software; monitoring sampling, drilling, and testing equipment; and record storage facilities.

· If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for variance. The cost of purchasing or contracting out information collection services should be part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

· Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There are no costs other than those included in Item 12 above.

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

The cost to the Federal Government is the investigator's (GS-12, step 5) pay, with a wage rate of \$36.26 per hour, multiplied by the time it takes to investigate a complaint (73 hours) or \$2,647 per investigation. The total cost to government is 390 cases x \$2,647 = \$1,032,330. Other operational expenses, such as equipment, overhead, and support staff expenses, would have occurred without this collection of information requirements and are considered normal OSHA operating expenses. Additional costs to the Federal Government would be incurred should a case be heard by an administrative law judge, should either party to the investigation decide to appeal the findings of the Agency, or by the Administrative Review Board, should either party appeal the administrative law judge's findings.

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

There are no program changes or adjustments to Items 13 or 14 of the OMB Form 83-I.

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

OSHA will not publish the information collected under the rule.

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

There are no forms on which to display the expiration date.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB Form 83-I.

OSHA is not seeking an exception to the certification statement in Item 19.