

**SUPPORTING STATEMENT FOR THE  
INFORMATION COLLECTION REQUIREMENTS OF  
REGULATIONS CONTAINING PROCEDURES FOR HANDLING OF  
RETALIATION COMPLAINTS  
OFFICE OF MANAGEMENT AND BUDGET  
(OMB) CONTROL NO. 1218-0236 (January 2011)**

**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 (DOL), through the Occupational Safety and Health Administration (OSHA), is responsible for investigating alleged violations of whistleblower protection provisions contained in certain Federal statutes (“whistleblower provisions”) that prohibit retaliatory action by employers against employees who report unsafe or unlawful practices. These whistleblower provisions prohibit an employer from discharging or otherwise retaliating against an employee because the employee engages in any of the activities specified in the particular statute as a protected activity. This information collection covers the whistleblower provisions under the following statutes: (1) the Occupational Safety and Health Act, 29 U.S.C. 660; (2) the Surface Transportation Assistance Act, 49 U.S.C. 31105; (3) the Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; (4) the International Safe Container Act, 46 U.S.C. 80507; (5) the Safe Drinking Water Act, 42 U.S.C. 300j-9(i); (6) the Energy Reorganization Act, as amended, 42 U.S.C. 5851; (7) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610; (8) the Federal Water Pollution Control Act, 33 U.S.C. 1367; (9) the Toxic Substances Control Act, 15 U.S.C. 2622; (10) the Solid Waste Disposal Act, 42 U.S.C. 6971; (11) the Clean Air Act, 42 U.S.C. 7622; (12) the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; (13) the Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes-Oxley Act, 18 U.S.C. 1514A; (14) the Pipeline Safety Improvement Act, 49 U.S.C. 60129; (15) the National Transit Systems Security Act, 6 U.S.C. 1142; (16) the Federal Railroad Safety Act, 49 U.S.C. 20109; (17) the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; (18) the Affordable Care Act, 29 U.S.C. 218(c); (19) the Consumer Financial Protection Act, Section 1057 of the Dodd Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203; (20) the Seaman’s Protection Act, 46 U.S.C. 2114, as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111-281; and (21) Section 402 of the FDA Food Safety and Modernization Act, P.L. 111-353.

Regulations at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, and 1983 set forth the procedures for the handling of retaliation complaints under these whistleblower provisions.<sup>1</sup> 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

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<sup>1</sup>Several of these regulations use the term “discrimination” or “discrimination complaints” in their titles. These terms are synonymous with “retaliation” and “retaliation complaints,” respectively.

complaint alleging such retaliation. These complainants are primarily employed by private or government employers. Three of these regulations, 29 CFR parts 1979, 1980, and 1981, require that complaints must be filed in writing and should include a full statement of the acts and omissions, with pertinent dates, that the employee believes constitute the violation. The other regulations, 29 CFR parts 24, 1977, 1978, 1982, and 1983, require no particular form of filing for complaints.<sup>2</sup>

Information collected under these whistleblower provisions and the related regulations is necessary for OSHA officials to investigate complaints to determine if a violation has occurred.

Information requirements contained in future statutes containing whistleblower provisions assigned to the Agency and future regulations promulgated by the Agency with respect to a whistleblower provision of any other Federal law, except those which are assigned to another DOL agency, will be added to this information collection.

**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.**

OSHA used this information to (a) determine the timeliness of the filing (i.e., complaints under these statutes, to be valid, must be filed within a specified time period after the occurrence of the alleged retaliatory act), and (b) provide information regarding the alleged retaliation. If this information was not collected, OSHA would not have sufficient information to determine the timeliness of the complaint and to initiate an 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.**

Some of these regulations specify that employees file complaints in writing, while the others require no particular form of filing. Most Regional and Area Offices of OSHA are equipped with fax machines that permit complainants to fax their complaints to OSHA for investigation. In addition, employees may file a complaint electronically.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use of the purposes 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, describe any methods used to minimize burden.**

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<sup>2</sup> Before the expiration of this ICR on January 31, 2011, 29 CFR Part 24 will have been revised to allow for any form of complaint filing. The regulation previously required written complaint filing.

This collection does not impact small businesses or other small entities. This information is only available from a complainant, and is the minimum information necessary to determine the scope and timeliness of the complaint so that OSHA can conduct an investigation.

**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 burden.**

OSHA initiates investigations of whistleblower complaints only on receipt of such complaints. If OSHA does not collect this information, valid complaints of retaliation would go uninvestigated, and violations unremedied.

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

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been 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 of 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 their employers retaliated against them as a result of engaging in activity protected by the above whistleblower provisions. Information required in the regulations 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 recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

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

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 October 28, 2010 (75 FR 66391, Docket No. OSHA-2010-0049) requesting public comment on its proposed extension of the information collection requirements in the regulations containing procedures for handling retaliation complaints at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, and 1983. 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 these regulations. In response to its notice to comment on this request, the Agency received one comment in support of the proposed extension of the collection of information requirements from Mr. Freddie Simpson, National President, Brotherhood of Maintenance of Way Employees Division and Brotherhood of Locomotive Engineers and Trainmen.

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

The Agency will not provide payments or gifts to the complainants.

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

OSHA will provide no assurances of confidentiality to the complainants.

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

OSHA will not request sensitive information from the complainants.

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

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized costs to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

## **Burden-Hour and Cost Determinations**

Employees file approximately 2,503 whistleblower complaints annually with OSHA under all of the whistleblower provisions that it administers. It is further estimated that the initial filing of a complaint by an employee detailing the facts surrounding the alleged retaliation, either orally or in writing, requires approximately one hour to complete, for a total annual burden of 2,503 hours.

There is no reliable way to estimate the cost to complainants. One method of estimating such cost would be to average their hourly wage rate multiplied by one hour. However, because complainants' wages range from minimum wage to more than \$100,000.00 a year, such an 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 recordkeepers resulting from the collection of information. (Do not include the cost of any 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 the variance. The cost of purchasing or contracting out information collections 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 covered by this item.

**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 this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The cost to the Federal Government is the investigator's pay (GS-12, step 5), with a wage rate of \$37.37<sup>3</sup> per hour, multiplied by the time it takes an investigator to receive and review the initial complaint (1 hour), or \$37.37 per investigation. The total cost to government is 2,503 cases x \$37.37= \$93,537. Other operational expenses, such as equipment, overhead, and support staff expenses, would have occurred without these collection of information requirements and, therefore, are considered normal OSHA operating expenses.

The cost has decreased from \$1,032,330 to \$93,537. This decrease is a result of the Agency's determination that the time it takes investigators to investigate complaints is not covered by the Paperwork Reduction Act of 1995 (5 CFR 1320.4(a)(2)).

**15. Explain the reasons for any program changes or adjustments.**

OSHA is requesting a total increase in the burden hours of the information collection requirements from 390 hours to 2,503 hours, for a total increase of 2,113 burden hours. This increase includes a program change increase (agency discretion) of 1,729 burden hours, a program change (new statute) increase of 414 burden hours, and an adjustment decrease of 30 burden hours.

A portion of the program change increase (1,729 burden hours) is due to the Agency's determination that all of its regulations containing procedures for the investigation of retaliation complaints, regardless of the form of filing of the complaint, contain information collection requirements. Accordingly, 29 CFR parts 1977 and 1978, which require no particular form of filing for complaints, are now included in this collection of information.<sup>4</sup>

The remainder of the program change increase (414 burden hours) is a result of the inclusion of a seven new statutes containing whistleblower provisions which have recently been delegated to the Agency. These new statutes are: (1) the National Transit Systems Security Act (NTSSA), 6 U.S.C. 1142; (2) the Federal Railroad Safety Act (FRSA), 49 U.S.C. 20109; (3) the Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. 2087; (4) the Affordable Care Act, 29 U.S.C. 218(c); (5) the Consumer Financial Protection Act (CFPA), Section 1057 of the Dodd Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203; (6) the Seaman's Protection Act (SPA), 46 U.S.C. 2114, as amended by §611 of the Coast Guard Authorization Act of 2010, Public Law 111-281; and (7) Section 402 of the FDA Food Safety and Modernization Act (FSMA), P.L. 111-353. Accordingly, 29 CFR Parts 1982 and 1983, which require no particular form of filing for complaints filed under NTSSA, FRSA and CPSIA, are included in this collection of information.

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<sup>3</sup> Source: [http://www.opm.gov/oca/11tables/html/RUS\\_h.asp](http://www.opm.gov/oca/11tables/html/RUS_h.asp)

<sup>4</sup> Complaints filed under 29 CFR Part 24 were previously included in this collection.

There is also an adjustment decrease from 390 to 360 hours, for a total adjustment decrease of 30 burden hours. This is a result of a decrease in the number of annual complaints received under existing statutes and regulations previously covered by this collection of information.

**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 these provisions.

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

No forms are available for the Agency to display the expiration date.

**18. Explain each exception to the certification statement.**

OSHA is not seeking an exception to the certification statement.

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This Supporting Statement does not contain any collection of information requirements that employ statistical methods.