

**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 (June 2013)**

This ICR revision seeks OMB approval to implement a whistleblower complaint form, titled “Notice of Whistleblower Complaint,” Form OSHA 8-60.1. This new form is a part of the Department of Labor (DOL) customer service initiative. The Web-based form will enable workers to submit whistleblower complaints directly to OSHA 24-hours a day, which will provide workers with greater flexibility for meeting statutory filing deadlines. Additionally, by streamlining the Agency’s electronic complaint filing process, the form will reduce the Agency’s complaint processing time, which will improve the quality of the customer service that the Agency can offer the public.

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(c); (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 (SOX), 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. 218C; (19) the Consumer Financial Protection Act, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5567; (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; (21) Section 402 of the FDA Food Safety and Modernization

Act, 21 U.S.C. 399d; and (22) Section 31307 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), P.L. 112-141, codified at 49 U.S.C. 30171.

Regulations at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1986 set forth the procedures for the handling of retaliation complaints¹ under these whistleblower provisions.²

Information collected under these whistleblower provisions and the related regulations is necessary for OSHA officials to investigate complaints to determine if a potential 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 or regulation, except those which are assigned to another agency, will be added to this information collection via a non-material change request, unless there are changes in how or what OSHA will collect; thus, the added burden for a new classification of protected worker would be considered a non-material change, if no other changes are made to the collection. DOL notes that the agency can already receive inquiries and complaints about practices that do not actually violate Federal worker protection laws (e.g., inquiries about vacation pay or the need to give coffee breaks); therefore, a policy of adding statutes or regulations will not affect what persons do in the normal conduct of their business.

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.

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 employees, also referred to as “complainants,” are primarily employed by private employers, although public-sector employees are covered under some, but not, all of the statutes.

As stated above, the whistleblower provisions and regulations at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1986 set forth the procedures for the handling of

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

²

OSHA recently published two regulations, 29 CFR parts 1984 and 1986, respectively, promulgating procedural regulations for handling whistleblower complaints filed under Section 1558 of the Affordable Care Act, which amended the Fair Labor Standard Act to add section 18C, 29 U.S.C. 218C, and the Seaman’s Protection Act, 46 U.S.C. 2114. See 78 FR 8390-8407 (Feb. 6, 2013) and 78 FR 13222-13236 (Feb. 27, 2013). Both regulations were previously submitted to OMB as non-substantive changes to this collection of information and approved. In FY 2013, OSHA anticipates publication of two additional new regulations promulgating procedures for handling whistleblower complaints filed under the Consumer Financial Protection Act, 12 U.S.C. 5567, and the FDA Food Safety and Modernization Act, 21 U.S.C. 399d. These regulations will be published at 29 CFR parts 1985 and 1987, respectively. Additionally, the Agency anticipates promulgating procedural regulations for Section 31307 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), P.L. 112-141 in the future.

retaliation complaints. Section 103 of each regulation articulates the basic procedures for filing whistleblower complaints with OSHA.³ Two of these regulations, 29 CFR parts 1979 and 1981, state 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, 1980, 1982, 1983, 1984 and 1986, require no particular form of filing for complaints. However, it is OSHA's policy to accept complaints in any form (i.e. orally or in writing) under all statutes. When an employee orally files a complaint with OSHA, an OSHA officer will reduce the complaint to writing. OSHA has adopted this policy to ensure that all complaints filed under its whistleblower statutes are processed consistently. Additionally, this policy helps ensure that employees of all circumstances and education levels will have equal access to the complaint filing process.

If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Methods for filing whistleblower complaints in writing include filing by mail, by facsimile, by hand-delivery, and by email. Complaints must be filed within statutory filing deadlines (ranging from 30 days to 180 days of the retaliatory action, depending on the statute).

OSHA uses the information provided in these complaints 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. Once a whistleblower's complaint is accepted by OSHA for investigation, information collected by the Agency during the investigation is not subject to the PRA under 5 CFR 1320.4(a)(2).

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.

OSHA is seeking OMB approval of this ICR revision in order to obtain clearance to implement a proposed whistleblower complaint form, titled "Notice of Whistleblower Complaint," (the OSHA 8-60.1; or "the form") as part of this ICR. The form will enable workers to electronically submit whistleblower complaints directly to OSHA 24-hours a day, which will provide workers with greater flexibility for meeting statutory filing deadlines. Additionally, by streamlining the Agency's electronic complaint filing process, the form will reduce the Agency's complaint

³ Sections 104(e)(2) and (e)(3) reference supplemental interviews conducted prior to the opening of an investigation. OSHA considers employees' responses to these follow-up questions to be facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify the complaint filed under Section 103; therefore, responses to the follow-up questions are not subject to the PRA under 5 CFR 1320.3(h)(9).

processing time, which will improve the quality of the customer service that the Agency can offer the public.

For purposes of electronic submission, previously the Agency estimated that 15% of whistleblower complaints were filed with the Agency electronically, via e-mail. The Agency assumes that the percentage of whistleblower complaints filed electronically will increase to 20% with the implementation of the electronic form; a better estimate of the increase in electronic complaint filing will be available for the next ICR submission.

OSHA plans to offer two versions of the form to employees via the Whistleblower Protection Program website, <http://www.whistleblowers.gov>. First, OSHA will offer an electronic version of the form, which employees will be able to complete and submit electronically at any time. Second, OSHA will also offer a downloadable version of the form, which employees will be able to download from the website, complete, and submit to OSHA in hard-copy by fax, mail, or hand-delivery. Both versions of the form are substantively identical and request from filers the same information necessary for initiating an OSHA whistleblower investigation.

Both versions of the form will be accompanied by information and instructions pages. The information pages provide basic information about OSHA's whistleblower protection program and the statutes that the Agency administers. This section briefly presents the basic elements that an employee must allege to have a valid whistleblower complaint, and briefly explains OSHA's process for processing new complaints. Under a separate heading, this section explains that public-sector employees may or may not be eligible to file with OSHA depending on the whistleblower statute at issue. The information pages also refer employees to the Whistleblower Protection Program's website or OSHA's toll-free hotline for more information.

The instructions provide that it is not necessary to use the form, as OSHA will accept whistleblowers complaints made orally or in writing, and in any language. The instructions explain that the filer must complete the fields that are marked as "required" on the form, and that fields not designated as "required" are optional. However, the instructions state that filers are encouraged to complete the form as completely and accurately as possible.

The Instructions also provide that an employee's identity must be disclosed to the employer and that whistleblower complaints filed with OSHA cannot be filed anonymously. The instructions further provide that a copy of the complaint will be shared with the employer, and therefore that the employee should not include witness names or their contact information on the form. The instructions also include a Privacy Act statement and a Paperwork Reduction Act statement. The applicable Privacy Act System of Records Notice for OSHA's whistleblower complaint files is DOL/OSHA-1, and is available for public review at: <http://www.dol.gov/sol/privacy/dol-osh-1.htm>.

Part 1 of the form requests the employee's information, including the employee's name, telephone, mailing, email address, preferred method of contact, and best time to be contacted.

The form also requests the work site address, date of hire, and job title at the place of employment where the alleged retaliation occurred. Because the whistleblower statutes enforced by OSHA permit complaints to be filed on another person's behalf, the form also requests that person filing the complaint identify whether he/she is the employee at issue in the complaint, a representative of the employee, or someone else. Additionally, the form asks for information regarding the employee's exclusive bargaining (union) representation (if any). The first three fields that appear on the form – the employee's name, mailing address, and telephone numbers – are marked as "required" fields. The information requested by these three fields is essential, as OSHA will conduct a follow-up interview with each filer to determine whether an investigation is appropriate.

Next, Part 2 of the form requests information about the employer named in the complaint including the employer's name; the name, title, and phone number of a contact management person; the name and title of the employee's supervisor; the employer's mailing address, telephone, and facsimile numbers; the employer's email address; and the type of business conducted by the respondent. The first field in Part 2 – field number 12, requesting the name of the employer – is marked as a "required" field. This information about the employer is essential for OSHA to determine whether the Agency has jurisdiction over the complaint, and for contacting the respondent should OSHA ultimately determine that an investigation is appropriate.

Part 3 of the form asks for information regarding the employee's allegation of retaliation. The form first asks the employee to identify what management person is responsible for the alleged retaliation. The form then asks the employee to identify what retaliatory action has been taken against them. To aid the employee, the form includes checkboxes that list ten types of retaliation that are commonly alleged by whistleblowers, plus a residual "other" option for retaliatory actions that are not listed. The form then asks the filer to specify when these retaliatory action(s) took place and when he or she first learned that the action(s) would be taken against them, which are the key dates for determining whether the complaint has been filed within the applicable statutory filing deadline. The form requests that the employee list all relevant dates to the best of their recollection. The second field in Part 3 – field number 21, requesting that the employee identify what retaliatory action has been taken against them – is marked as a "required" field. This information is essential because an employee must have suffered a retaliatory action to be protected under any of the whistleblower statutes enforced by OSHA.

The form then asks what reason the employer gave for each retaliatory action. Additionally, the form asks why the employee believes that the employer took the alleged retaliatory action. All of the whistleblower statutes enforced by OSHA only protect employees who have been retaliated against for engaging in "protected activity." To aid the employee, the form includes checkboxes that list seven types of protected activity that are commonly alleged by whistleblowers, plus a residual "other" option for protected activities that are not listed. The form then asks the employee to provide the date(s) of the protected activity.

The form then asks whether the employee believes that the employer knew he or she engaged in the protected activity. All of the whistleblower statutes enforced by OSHA require that the respondent have some knowledge of the employee's protected activity.

Next, the form asks whether the employee has filed any previous complaints against the same employer with OSHA regarding the same or similar actions. The form also asks whether the employee has taken any other action(s) to appeal or report the matter under any other procedure. Finally, the form asks how the employee first became aware that he or she could file a complaint with OSHA. This information is important for OSHA when determining whether to open an investigation.

Part 4 of the form is an Identification of Representative section, to be completed only by authorized representatives filing a complaint on behalf of the employee. The form asks the representative's name, title, organization or union affiliation (if any), address, phone number and email address. The form then includes a check box next to a certification statement that the named employee has authorized the person to act as representative for purposes of the complaint.

Part 5 of the form is a "Certification." The form includes a note cautioning filers that it is unlawful to make any materially false, fictitious, or fraudulent statement to an agency of the United States. The form also includes a check box next to a certification statement, in which the employee is asked to certify that the information provided in the complaint form is true and correct to the best of the employee's knowledge and belief.

The form also includes a "Continuation Sheet" to provide additional space for responses.

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.

This collection does not require or request small businesses or other small entities to provide any information.

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 January 17, 2013 (78 FR 3918-3920) requesting public comment on its proposed revision of the collection of information requirements in the whistleblower statutes administered by the Agency and associated regulations containing procedures for handling retaliation complaints at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, and 1983. This revision includes a proposed form that will allow complaints to be filed electronically through OSHA's website. This notice was part of a preclearance consultation program intended to provide interested parties with an opportunity to comment on OSHA's

request to approve the revision of the collection of information requirements by the Office of Management and Budget (OMB).

The Agency received two comments from the public on the proposed revision during the 60-day comment period.

On March 18, 2013, the American Train Dispatchers Association (ATDA), Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT), Brotherhood of Maintenance of Way Employees Division (BMWED/IBT), Brotherhood of Railroad Signalmen (BRS) Brotherhood of Railway Carmen Division (TCU/IAM), Sheet Metal, Air, Rail and Transportation Workers (SMART), and Transport Workers Union of America (TWU) (collectively, the “Rail Labor Organizations”) jointly submitted a comment to the ICR in which the Rail Labor Organizations expressed their support for the revision to the ICR and the proposed online complaint form. In the comment, the Rail Labor Organizations stated that they believe that “the proposal will provide workers with greater flexibility and streamline the process for filing whistleblower complaints under the various statutes,” that “the proposed information collection requirements are necessary for the proper performance of the Agency’s functions,” and that “OSHA has accurately estimated the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used.” No agency action was taken in response to this comment.

Also on March 18, 2013, Richard Renner, an attorney with the law firm Tate & Renner, Attorneys at Law, submitted a comment to the ICR in which he indicated his general support for the implementation of a complaint form, but suggested numerous revisions to the content of the proposed online complaint form contained in the ICR:

A. Mr. Renner expressed his concern that the content and textual density of the first page of the proposed complaint form might discourage employees from filing a complaint with the agency, which he states would contravene the remedial purpose of the whistleblower protection statutes enforced by the agency. Mr. Renner requested that the information and Instruction pages provide the necessary information as simply and directly as possible, avoid language that is “legalistic or off-putting,” and start with information for which a whistleblower might have sought this form. Mr. Renner also suggested that the agency add an “appealing graphic image” to the first page of the form, as well as a chart summarizing the statutory timeframes for filing a complaint under the whistleblower protection statutes enforced by the agency.

No actions were taken in response to this comment: OSHA believes that the language used on the information and instructions pages is clear, direct, and avoids using legalistic or off-putting language. OSHA believes that the language presented on the first page of the form clearly and accurately provides information that is of utmost importance and relevance to new complaint filers – particularly, that each law requires complaints to be filed within a certain number of days after the alleged retaliation, what basic elements must be alleged in a whistleblower complaint filed with OSHA, that OSHA will need to contact the filer to determine whether to conduct an investigation, and that, by law, OSHA must disclose the identity of complaint filers to the employer named in the complaint. This is essential information for new filers of whistleblower

complaints, it is presented clearly and concisely, and the language does not discourage employees from filing whistleblower complaints.

Further, potential filers will be able to access both the electronic and downloadable versions of the form through the DWPP public website (www.whistleblowers.gov), which provides the information regarding complaint filing timeframes. In addition to the information on timeliness deadlines that already appears on the website, DWPP has developed a new chart that clearly and succinctly summarizes the features of the 22 whistleblower statutes that OSHA administers, includes the filing deadlines for each statute. The chart will be posted to the website before publication of the online complaint form. Because potential filers will already be presented with information regarding filing timeframes before they access the proposed form, adding the information to the first page of the instructions is duplicative and unnecessary.

Moreover, the whistleblower protection statutes that the agency enforces are quite complex, and as a consequence, potential filers often do not know under which specific statute (if any) their complaints of retaliation fall. OSHA is responsible for properly determining the statute(s) under which a complaint is filed. Because OSHA does not expect potential filers to know which statute covers their complaints, the form advises potential filers that “the time periods [for filing a complaint] vary from 30 days to 180 days,” and directs filers to visit the website or to call OSHA’s toll-free number for more information on the statutory deadline.

B. Mr. Renner states that “the instructions to the proposed form should inform employees that they have a right to be represented by an attorney of their choice.”

No actions were taken in response to this comment: While it is true that workers that file whistleblower complaints with the agency *may* retain the assistance of counsel, the language proposed by Mr. Renner could mislead potential filers into incorrectly believing that they *need* an attorney to file a complaint or to proceed with an investigation. To the contrary, OSHA’s investigative process is designed to accommodate workers that initiate whistleblower investigations without the assistance of counsel, either by choice or due to financial constraints.

C. Mr. Renner states that because OSHA accepts whistleblower complaints in any form under all statutes, the instructions to the form should make clear that filers may also file a complaint by “prepar[ing] a letter with the required information.”

No actions were taken in response to this comment: The first page of the instructions state: “It is not necessary to use this form. OSHA will accept whistleblower complaints made orally (telephone or walk-in) or in writing, and in any language.” Moreover, the online complaint form will be housed on the “File a Complaint” page of DWPP’s public website (www.whistleblowers.gov), and the link to the online complaint form will appear as part of a list of various methods for filing a complaint. This list makes explicit that a worker may file a whistleblower complaint with OSHA by writing a letter and submitting it to OSHA. Because potential filers will already be presented with this information prior to accessing the proposed form, further clarification of the point in the instructions is duplicative and unnecessary.

D. Mr. Renner takes issue with the sentence in the instructions that states that “the information requested by this form should be provided.” Mr. Renner states that a filer of a complaint need only provide OSHA with the parties’ contact information, a description of the adverse actions at issue, and an allegation that the adverse actions were unlawful at this stage. As a remedy, Mr. Renner suggests that these three necessary pieces of information be designated as “required” on the form.

While it is true that a worker may file a complaint without including all of the information requested in the form, the information requested by the form provides valuable detail regarding the nature and circumstances of the alleged retaliation, which greatly assists OSHA when it conducts follow-up interviews with the filer to determine if the complaint is appropriate for investigation. For this reason, OSHA requests that filers that choose to use the form to file complete it as thoroughly as possible.

Nonetheless, in response to Mr. Renner’s observation, OSHA removed the sentence identified by Mr. Renner. Additionally, OSHA accepted Mr. Renner’s recommendation to designate on the form the form which fields are “required.” OSHA has marked items 1, 2, 3, 12, and 21 on the proposed form as “required,” and included language in the instructions to explain the designation.

E. Mr. Renner further commented that he disagrees with the content that OSHA has chosen to display on the first page of the form – specifically, the information regarding when the complaint may be disclosed to the public and to the employer, the brief description of OSHA’s process, and the alert that the complaint may be dismissed if the complainant is unresponsive to OSHA’s attempts to contact the complainant. Mr. Renner suggests that this content be moved back to later pages of the instructions, and in its place, he suggests that information regarding filing time limits, the various forms of making a complaint, and the advisability of consulting legal counsel be displayed on the first page of the instructions.

No actions were taken in response to this comment: OSHA believes the ordering of the content of the form effectively conveys the information to potential filers. Additionally, displaying the Privacy Act Statement and PRA Statement on the first page of the instructions is in accordance with DOL Paperwork Reduction Act policies. __

F. Mr. Renner suggested that the form should instruct complainants to list all the adverse actions that they believe were retaliatory in the complaint. However, Mr. Renner further suggested that the form explain that complainants need not include all the evidence that will support their case, because a copy of the complaint will be shared with the employer upon filing, but evidence submitted during the investigation will be “managed” by the investigator. As a remedy, Mr. Renner suggests that OSHA remove the sentence: “If there is any particular evidence that supports your allegation, include the information in your description.”

No actions were taken in response to this comment: Mr. Renner’s first suggested instruction is not necessary, as OSHA’s policy is to permit the liberal amendment of complaints, provided that the original complaint was timely filed and the investigation has not been concluded. Moreover,

as noted above in response to Comment D., OSHA has marked question number 21 on the form—which asks the filer to identify which adverse actions he or she has suffered—as a “required” field, and thus complainants are alerted that they must allege to have suffered at least one adverse action to file.

The second suggestion is also unnecessary, as the instructions to the form clearly warn the potential filer that “the information contained in this complaint will be shared with the employer.” Further, while it is true that the complainant will submit evidence to the investigator if an investigation is launched, the investigator will nonetheless disclose to the employer any information relevant to the resolution of the case, because evidence submitted by the parties to an investigation must be tested and the opposing party provided the opportunity to fully respond. In short, both the initial complaint and evidence submitted during a subsequent investigation will be shared with the opposing party, though they will be redacted as necessary to pursuant to applicable privacy and confidentiality laws, and to preserve the anonymity of confidential witnesses.

G. Mr. Renner next stated that the instructions should inform employees that they can supplement their original complaint during the investigation.

No actions were taken in response to this comment: Given its policy of liberal amendment of complaints, OSHA believes that instructing potential filers that they are free to amend and supplement the complaint later is unnecessary, and could discourage potential filers from communicating all relevant information regarding the circumstances of the alleged retaliation in the initial complaint.

H. Mr. Renner criticized the discussion of statutory coverage of public-sector employees on the second page of the form, stating that the ordering of the information may mislead potential filers of complaints under statutes other than the OSH Act. As a remedy, he suggests that the opening paragraph of the section be rewritten to clarify that public-sector employee coverage varies under the different whistleblower protection statutes enforced by the agency.

In response to Mr. Renner’s criticism, OSHA reordered and modified the language explaining coverage of public-sector employees on the page two of the form.

I. Lastly, Mr. Renner requested the removal of the “certification” in Part 5 of the form, which, after informing filers that submission of materially false information to government agency is a crime, asks the filer to certify that the information in this complaint is true and correct to the best of my knowledge and belief. Mr. Renner stated that complaints are pleadings, not evidence, and expressed concern that the certification would “have the unintended and undesirable effect of facilitating the use of the complaint as evidence,” which might pressure complainants to “make their complaints too long.”

No actions were taken in response to this comment: OSHA disagrees that requesting complainants to affirm that they have only provided truthful information in their complaint affords the complaint any additional evidentiary weight. The certification discourages filers

from providing false information to OSHA that might undesirably distract or delay the agency's subsequent investigation.

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.

During the course of an OSHA investigation, information contained in an investigative case file may be disclosed to the parties in order to resolve the complaint. During an investigation, information about the complaining party and the employer will not be released to the public except to the extent allowed under the Freedom of Information Act (FOIA). However, once a case is closed, it is possible that information contained in the complaint or a case file may be released to the public as required by the FOIA. Thus, OSHA will provide no assurances of confidentiality to the complaining party.

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 does 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 filed 2,872 whistleblower complaints with OSHA under all of the whistleblower provisions that it administers in Fiscal Year 2012.⁴ It is further estimated that the initial filing of

⁴ Source: OSHA Whistleblower IMIS, Investigation Data report, 02/12/2013. Note, this data includes complaints received under all 22 statutes in FY 2012, including complaints received under the Consumer Financial Protection Act, the FDA Food Safety and Modernization Act and the Moving Ahead for Progress in the 21st Century Act

a complaint by an employee detailing the facts surrounding the alleged retaliation, either orally or in writing, requires approximately one hour to complete. Therefore, the total annual burden is 2,872 hours.

In the absence of more reliable information, the DOL has monetized the value of these burden hours by increasing the February 2013 average hourly earnings of all employees on private nonfarm payrolls of \$23.82 by 40 percent to account for the full value of respondent time (a reflection of wages and fringe benefits). See [The Employment Situation—April 2013](#), DOL Bureau of Labor Statistics, at p. 32.

$$2,872 \text{ hours} \times \$23.82 \times 1.4 \text{ fringe benefit factor} = \$95,775$$

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. The ability to file a complaint online means that any incidental costs associated with filing a complaint via some other format is done by the complainant for personal reasons not directly associated with the information collection, itself.

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.

(MAP-21).

The cost to the Federal Government to receive this information is the investigator's pay (GS-12, step 5), with a wage rate of \$37.37⁵ 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 2,872 cases x \$37.37= \$107,327.

OSHA estimates that the initial technical development costs for the online complaint filing system will be approximately \$54,000 (which includes application development, HTML5 coding, user interface development, document/data transfer testing, application testing, and implementation). OSHA's whistleblower program will also contribute approximately 40 hours of a program analyst's time (GS-12, step 5; wage rate of \$40.66⁶) to the development and launch of the online complaint filing system, resulting in costs of approximately \$1,624. Taken together, OSHA estimates that it will cost \$55,624 to complete development of the online filing system and to make it available for public use. Annualized development costs over a three-year period are estimated to be \$18,541 (\$55,624/3).

After the online complaint filing system is launched, OSHA estimates that it will incur annual costs of approximately \$9,360 to maintain the online filing system.

Other operational expenses, such as equipment, overhead, and support staff expenses, would have occurred without these collections of information requirements and, therefore, are considered normal OSHA operating expenses.

The total cost to the Federal Government is \$135,228 (\$107,327 + \$18,541 + \$9,360).

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

OSHA received 2,872 complaints in Fiscal Year 2012, 365 more complaints than the 2,507 complaints estimated in the existing ICR. Thus, OSHA is requesting a total adjustment increase in burden hours of 365, from 2,507 to 2,872.

As discussed above, OSHA now permits complaints to be filed in any form, and oral complaints are committed to writing. In addition, the Agency is seeking OMB approval to provide two additional methods for filing a complaint with the use of the new paper complaint form and the new electronic complaint form. However, the Agency does not believe that these changes will further impact the adjusted burden hours.

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.

5 Source: http://www.opm.gov/oca/12tables/html/RUS_h.asp.

6 Source: <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/washington-baltimore-northern-virginia-dc-md-va-wv-pa-hourlyovertime-rates-by-grade-and-step/>.

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.

The Agency will display the expiration date for OMB approval on both the downloadable and electronic versions of the form associated with this collection of information.

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.