

**SUPPORTING STATEMENT FOR
THE INFORMATION COLLECTION REQUIREMENTS IN THE
REGULATIONS CONTAINING PROCEDURES FOR THE
HANDLING OF RETALIATION COMPLAINTS
OFFICE OF MANAGEMENT AND BUDGET (OMB)
CONTROL NO. 1218-0236 (February 2024)**

This is a revision request for a currently approved data collection.

The agency seeks OMB approval to implement revisions for the approved whistleblower complaint form, “OSHA Online Whistleblower Complaint Form” (OSHA 8-60.1 or Form). The web-based form enables employees to submit whistleblower complaints directly to OSHA 24 hours a day, which provides employees with greater flexibility for meeting statutory filing deadlines. The electronic form also includes a questionnaire regarding their complaint to better direct complainants to the proper investigative agencies.

The proposed form revisions are changes and technical updates that will improve the quality of customer service the agency can offer the public.

A. 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 (provisions) that prohibit retaliatory action by employers against employees who report unsafe or unlawful practices. These provisions prohibit an employer from discharging or otherwise retaliating against an employee because the employee engages in any of the protected activities specified in the relevant statute. 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, 12 U.S.C. 5567; (20) the Seaman's Protection Act, 46 U.S.C. 2114; (21) FDA Food Safety and Modernization Act, 21 U.S.C. 399d; (22) the Moving Ahead for Progress in the 21st Century Act (MAP-21), 49 U.S.C. 30171; (23) the Taxpayer First Act, 26 U.S.C. 7623(d); (24) the Criminal Antitrust Anti-Retaliation Act, 15 U.S.C. 7a-3; and (25) the Anti-Money Laundering Act, 31 U.S.C. 5323(a)(5),(g),&(j). 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.

Regulations at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1991, and 1992 set forth the procedures for the handling of retaliation complaints¹ under these whistleblower provisions.

Information requirements contained in future statutes containing whistleblower provisions assigned to the agency and future regulations promulgated by the agency concerning 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 employee 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 violate Federal employee 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 they have 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 these statutes as well.

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

As stated above, the whistleblower provisions and regulations at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1991, and 1992, set forth the procedures for the handling of retaliation complaints. Section 103 of each regulation articulates the basic procedures for filing whistleblower complaints with OSHA.² Two of these regulations, parts 1979 and 1981, state that complaints must be filed in writing and should include a complete statement of the acts and omissions, with pertinent dates, that the employee believes constitute the violation. All of the other regulations require no particular form of filing for complaints. The agency's policy is to accept complaints in any form (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.

The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed; however, it may be filed with any OSHA officer or employee. Methods for filing whistleblower complaints in writing include filing by mail, facsimile, hand-delivery, email, and through an online form. If the complainant cannot file the complaint in English, the agency will accept the complaint in any language. 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 if the complaint is being filed with the correct agency, (b) the timeliness of the filing³, and (c) provide necessary 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.

Importantly, once a whistleblower's complaint has been accepted by OSHA for further investigation, information collected by the agency during the investigation is not subject to the Paperwork Reduction Act (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

² Sections 104(e)(2) and (e)(3) reference supplemental interviews conducted before the opening of an investigation. OSHA considers employees' responses to these follow-up questions to be facts or opinions obtained or solicited through non-standardized 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).

³ Complaints under these statutes, to be valid, must be filed within a specified period after the occurrence of the alleged retaliatory act.

the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce the burden.

OSHA 8-60.1, currently approved under this ICR, includes interactive features that make it easier to understand and complete than previously used paper forms. In addition, the Form includes a questionnaire, accessed before the user completes the actual complaint form, to determine if their complaint would be better suited with another investigative agency (i.e., Wage and Hour Division, Equal Employment Opportunity Commission, National Labor Relations Board, or Office of Special Counsel).

OSHA is seeking OMB approval for this revision to obtain clearance to implement proposed changes and technical updates to the form. The revisions to this form will make the form more interactive and will migrate e-Complaint data into OSHA Information System (OIS) - Whistleblower, which is the agency's database. This will improve the quality of the customer service that the agency can offer the public.

In addition, OSHA proposes to revise this ICR to include recent changes to the electronic complaint form, making material changes and technical updates to the Form. The major changes are summarized as follows, explained in more detail below: (1) On the landing page, before the electronic complaint form, the user would have the opportunity to click a hyperlink which will direct them to a map that identifies the OSHA regions and their respective contact information. In addition, the user would be required to answer a questionnaire before completing the online complaint form. The questionnaire is designed to assist the users with filing their complaints with the proper agency. (2) Once in the electronic form, "pop-ups" would appear whenever the user attempts to click away from a required field without making an entry. Lastly, (3) the character count for two optional text boxes would be increased from 1,000 to 2,000 characters, allowing users to fully explain their complaints to the agency.

In Fiscal Year (FY) 2023, the agency received approximately 15,758 complaints. Of those, 73% (11,554) were online complaints. The agency estimates it will receive the same amount, if not more, for FY 2024. OSHA will offer the revised form to employees via the Whistleblower Protection Program website, <http://www.whistleblowers.gov>. Employees will still be able to complete and submit the form electronically at any time, and they will still be able to print a copy of the completed electronic form after they have successfully submitted the form by using the "Print this Complaint" button on the confirmation page. Like the approved form, the revised form would still be available in English and Spanish.

"Screen-shot" documents displaying the English version of the proposed form, as well as a markup of the approved form as revised, are included with the attachments accompanying this Supporting Statement. Due to the interactive nature of the web-based form, some of the pages

are duplicate pages to show the functionality of the buttons and to display the text of the various pop-up boxes. The Spanish version of the form will be identical to the English version.

The revised form would be accompanied by an introduction and instructions page which includes the same basic information that was included in the information and instructions pages of the previous form. This page will also display the DOL form number, as well as the OMB approval number and ICR expiration date.

In FY 2023, OSHA administratively closed 1,909 complaints due to OSHA's lack of jurisdiction over their complaint. Therefore, OSHA has created a questionnaire form to be completed prior to the user completing the actual online complaint form. The questions are designed in a manner to ensure the user is filing a complaint with the proper agency. If their answers indicate that OSHA would not have investigative authority over their complaint, then they would be redirected to the proper investigative agency for further assistance.

The first question asks the user if their complaint is related to the Wage and Hour Division (WHD). More specifically, if their complaint deals with the Family Medical Leave Act (FMLA), Fair Labor Standards Act (FLSA), or their H-2B Visa. To assist the user, each one of the questions has a link that displays a description of the meaning, or definition.

If the user selects one of the aforementioned options, then a second question will appear asking them if their complaint includes additional workplace safety or health issues or other laws covered by OSHA. The word "laws" is a link to OSHA's Whistleblower Statute Summary Chart, which provides additional information for the 25 statutes OSHA enforces. If they select "Yes", then they will be prompted to the next page. If they select "No", then a display will appear stating, "Based on your answers it does not appear OSHA has jurisdiction to investigate your complaint. Please click here to go to the Wage & Hour Division for further assistance." The phrase "Wage & Hour Division" will be a link redirecting the user to the WHDs website.

The second question asks the user if their complaint is related to the National Labor Relations Board (NLRB). More specifically, if their complaint relates to engaging in protected concerted activities. To assist the user, the phrase "protected concerted activities" is a link that displays a description of the meaning, or definition.

If the user selects "Yes", then a second question will appear asking them if their complaint includes the following: Group Action to Improve Wages and/or Benefits; Union Activities (supporting a union or choosing not to participate in union activities); or Workplace safety or health issues or other laws covered by OSHA. The word "laws" is a link to OSHA's Whistleblower Statute Summary Chart, which provides additional information for the 25 statutes OSHA enforces. If they select either Group Action to Improve Wages and/or Benefits or Union Activities then a display will appear stating, "Based on your answers it does not appear OSHA

has jurisdiction to investigate your complaint. Please click here to go to the National Labor Relations Board for further assistance.” The phrase “National Labor Relations Board” will be a link redirecting the user to NLRB’s website. If the user selects workplace safety or health issues or other laws covered by OSHA, then they will advance to the next page. It will be noted, “NLRB also protects employees who complain about workplace safety or health issues. Therefore, an individual is not precluded from filing with NLRB if they file with OSHA.”

The third question asks the user if their complaint is related to the Office of Special Counsel (OSC). More specifically, they are asked if they are a federal employee (not including the United States Postal Service (USPS)). If the user selects “Yes or Not Sure”, then a second question will appear asking if their complaint is related to the following: Clean Air Act; Comprehensive Environmental Response, Compensation and Liability Act; Safe Drinking Water Act; Solid Waste Disposal Act. Each of these phrases is a link that displays a description of the meaning, or definition. If they select one of these phrases, then they will be prompted to the next page. If they are a federal employee and none of the aforementioned statutes apply, then they will be redirected to the Office of Special Counsel for further assistance. The phrase “Office of Special Counsel” will be a link redirecting the user to OSC’s website. It will be noted, “OSC also protects employees who complain about the previous statutes as well. Therefore, an individual is not precluded from filing with OSC if they file with OSHA.”

The fourth question asks the user if their complaint is related to the Equal Employment Opportunity Commission (EEOC). More specifically, is their complaint related to any of the following: Reasonable Accommodation for Disability; Disability; Employer Medical Exams; Harassment; Equal Pay; Retaliation for EEO Activity, or Discrimination based on the following: Race/Color; National Origin; Religion; Sex (including sexual orientation, gender identity, and pregnancy); Pregnancy; Age Discrimination; Genetic Information. Each of the keywords or phrases is a link, which displays a description of the meaning, or definition.

If the user selects “None of the above,” they will be prompted to the next page.

If the user selects any of the above, then a second question will appear asking if their complaint includes additional workplace safety and health issues or other laws covered by OSHA. The word “laws” is a link to OSHA’s Whistleblower Statute Summary Chart, which provides additional information for the 25 statutes OSHA enforces. If the user selects “Yes or Not Sure”, then they will be prompted to the next page. If the user selects “No”, then a display will appear stating, “Based on your answers it does not appear OSHA has jurisdiction to investigate your complaint. Please click here to go to Equal Employment Opportunity Commission for further assistance.” The phrase “Equal Employment Opportunity Commission” will be a link redirecting the user to EEOC’s website.

The last page of the questionnaire asks the user if their complaint is related to retaliation for reporting the following: Workplace safety and health issues or other laws covered by OSHA (the word “laws” is a link to OSHA’s Whistleblower Statute Summary Chart, which provides additional information for the 25 statutes OSHA enforces); Reporting a work-related injury or illness; Filing a complaint or reporting regulatory violations to OSHA or any other federal government or regulatory agency other than WHD, OSC, NLRB, and EEOC; Refusing to perform a task the employee believes is dangerous or illegal; Other (a text box will be located for this selection for the user to write a brief description of the retaliation they have suffered). A selection is required for the user to advance to the next page.

This page also contains two statements for users who have not suffered any type of retaliation covered by laws that OSHA enforces.

The first statement states, “If you have not experienced retaliation for reporting any of the above items and are wanting to make a general inquiry regarding whistleblower protection, please visit <https://www.osha.gov/form/ecorrespondence>”. The website will be a link redirecting the user if selected.

The second statement states, “If you have not experienced retaliation for reporting any of the above items and are wanting to file a safety and health complaint or would like to speak to an OSHA Compliance Officer, please call (800) 321-6742 (OSHA) or visit <https://www.osha.gov/workers/file-complaint>.” The website will be a link redirecting the user if selected.

The first page of the actual online complaint form is the adverse action section. The adverse action section of the form explains that to have a valid complaint, an employee must allege that an employer took an adverse employment action against the employee. This section defines the word “adverse.”

The form asks the employee to identify the most recent retaliatory action they have suffered. 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. This section also provides a button the employee may click on if he or she has not suffered an adverse action. If the employee clicks this button, additional information appears in a pop-up box that explains that OSHA’s whistleblower protection laws only cover employees who have suffered an adverse employment action. The pop-up box also refers employees to the Whistleblower Protection Program’s website or OSHA’s toll-free hotline for more information. This section of the form is a “required” section, and the employee cannot advance to the next section of the form until a type of adverse action is selected.

The revised form would include two new pop-up boxes, alerting that the employee must make an adverse action checkbox selection. This requirement to select one checkbox is not a new requirement; the current form does not allow the user to move forward without this action. In addition, the revised form would add a pop-up to the “Other (please describe)” text box prompting the employee to enter a description in this field. Entering data into the “Other” text box is currently required by the form and will continue to be required. The information requested in this section is essential because an employee must have suffered a retaliatory action to be protected under any of the whistleblower statutes enforced by OSHA.

Once the employee has completed the adverse action section of the form, the employee may continue to the next section of the form, which requests information about the date the most recent adverse action occurred. This section provides a link to OSHA’s Whistleblower Statute Summary Chart which contains information about filing deadlines that apply to each statute. This section of the form requests that the employee enters the date of the most recent adverse action. The user can enter the date manually or use the interactive calendar box to select the date. This is a required section of the form, and the employee cannot access the next section of the form until a most recent adverse action date has been entered. The revised form would include a new pop-up box, alerting that the employee must select. The information requested in this section is essential because an employee must file a complaint within a certain number of days after the alleged adverse action to be protected under the relevant whistleblower statute enforced by OSHA.

Once the user has selected the date for their most recent adverse employment action, the employee may continue to the next section of the form, which asks the question, “Why do you believe you suffered the adverse employment action(s)? To aid the user, the form includes checkboxes that list eight reasons for retaliation that are commonly alleged by whistleblowers, plus a residual “Other (please describe below)” option for retaliatory actions that are not listed. This is a required section of the form, and the user cannot access the next section of the form until a checkbox has been selected. The revised form would include a new pop-up box, alerting that the employee must select. If the user selects “Other (please describe below)” the text box below will be highlighted in red prompting the user to enter a description in this field. Entering data into the “Other” text box is currently required by the form and will continue to be required. In addition, the text box for this has been increased from 1,000 characters to 2,000 characters. The information requested in this section is essential because an employee must demonstrate that they were retaliated against for engaging in a protected activity to be protected under the relevant whistleblower statute enforced by OSHA.

In addition, there is a question asking the user if there is anything else you would like OSHA to know about what happened. This field has also been increased from 1,000 characters to 2,000 characters. However, this question does not require a response to advance to the next page.

Once the user has provided their reasoning for why they suffered the adverse employment action, they will advance to the next section of the form, which asks the user to provide the name of their employer, and if they are considered private or public sector. For employees who select the public sector employer option, the employee must then select whether the employer is either a “Federal” employer or a “State, County, Municipal or Territorial” employer. The information requested in this section about the employer is essential for OSHA to determine whether the agency has jurisdiction over the complaint. No changes are being proposed to this part of the existing form.

For users who select the Federal employer option, a pop-up box explains to the employee that “Coverage of federal employees varies by statute. Except for U.S. Postal Service employees, the OSH Act does not protect federal employees from retaliation. However, all federal agencies are required to establish procedures to ensure that no employee suffers retaliation for reporting unsafe or unhealthful working conditions, or for otherwise engaging in safety and health activities. If you are a federal employee and you are unsure if you are covered by a statute OSHA administers, please call 1-800-321-OSHA (6742) for assistance or visit www.whistleblowers.gov.” This language has been updated from the previous version more concisely.

For users who select the State, County, Municipal, or Territorial employer option, a pop-up box explains that OSHA’s whistleblower coverage of non-federal public sector employees varies by statute. The pop-up box provides information about Federal OSHA-approved occupational safety and health programs, including the website for OSHA’s Directorate of Cooperative and State Plan Programs. No changes are being proposed to this part of the existing form.

Once the user has provided the company name and selected the type of employer, the employee may continue to the next section of the form, which requests information about the employee’s worksite where the alleged retaliation occurred. The system uses the “Melissa Address Service” which is being used by OCIO. The user will be prompted to enter the street address and then the State using a dropdown box. The revised form would include a new pop-up box, alerting that the employee must select a state. This section of the form requires that the employee indicate the state or U.S. territory in which the retaliation occurred. Once the State has been selected, the user will select the city using the dropdown box with the cities for the State that was selected. The same method will be used when selecting a zip code. This information about the employer is essential for OSHA to determine whether the agency has jurisdiction over the complaint and to which OSHA Regional office the complaint should be forwarded for processing.

In addition, this section asks two questions. The first question asks the user to identify the person who issued the adverse employment action, along with the title or position, and contact information. The second question asks the user to provide the reason the employer gave for

issuing the adverse employment action. These questions do not require a response to advance to the next section.

Once the user has indicated the state in which the retaliation occurred, the user may continue to the next section of the form, which requests additional 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. This information about the employer is important for contacting the respondent should OSHA ultimately determine that an investigation is appropriate. No changes are being proposed to this part of the existing form.

The next section of the form requests the employee's information, including the employee's name, telephone number, mailing address, email address, preferred method of contact, and best time to be contacted. In the currently approved form, the employee's name, mailing address, and telephone numbers are marked as "required" fields, although an employee need not provide a telephone number if the employee indicates that no telephone number is available. The revised form would require an email address to be entered. In addition, the user would have to reenter their email address in the "Confirm Email Box." Both email addresses must be identical for the user to proceed. This section also includes pop-up boxes that indicate: "Please complete all required fields" and "Please enter your last name." The revised form also would include a pop-up box alerting that the employee must complete this section. This section also includes a question asking the user if they require the use of a translation service. If the user selects "Yes (specify language), then they would be required to enter the preferred language. If they select "No", then they will advance to the next page. This question is not required to advance to the next page. This information is essential because whistleblower complaints filed with OSHA cannot be filed anonymously. In addition, this information will be useful for the investigators to contact the users (with the use of a translation service if one was identified), so their complaints can be processed promptly.

The next section of the Form is the Designated Representative section. Because the whistleblower protection statutes enforced by OSHA permit complaints to be filed on another person's behalf, the form asks whether the employee has a designated representative and whether the person completing the form is a designated representative filing on behalf of an employee. If the response to either question is yes, the form requests information about 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 a representative for purposes of the complaint. No changes are being proposed to this part of the existing form.

The final section of the form is a Submission section. This section of 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 explains that by clicking the submit button, which will submit the complaint to OSHA, the employee is certifying that the information provided in the complaint form is true and correct to the best of the employee's knowledge and belief. In addition, the user is notified that all services are free, whether they are documented or not, and that it is unlawful for their employer to terminate their employment or retaliate against them for filing a complaint with OSHA, or any other government or regulatory agency.

After an employee submits their complaint, they will be given the option to print their complaint for their records by selecting the "Print this Complaint" button. In addition, the section includes an optional questionnaire that asks how the employee learned about OSHA's Whistleblower Protection Program. To aid the employee, the form includes checkboxes that list ten common responses to this question, plus a residual "other" option for options that are not listed. This information is important for OSHA to determine how employees learn about OSHA's whistleblower protections and to improve its outreach efforts. No changes are being proposed to this part of the existing form.

In the revised form, the agency would also make a minor alteration to change all existing dark red form text to a bright red font color.

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.

The information collection requirements in these regulations are specific to each worker involved, and no other source or agency duplicates these requirements. The required information is available only from these employees. Currently, there is no indication that any alternate source is available.

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 and, therefore, do not have a significant economic impact on a substantial number of small entities.

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 upon receipt of such complaints. If OSHA does not collect this information, valid retaliation complaints 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 after engaging in activity protected by the above whistleblower provisions. Information required in the regulations is consistent with the above guidelines and under the guidelines set forth in 5 CFR 1320.5.

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. 506(c)(2)(A)), OSHA published a 60-Day notice in the Federal Register on December 4, 2023, (88 FR 84174) soliciting comments on its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Regulation Containing Procedures for Handling of Retaliation Complaints under Docket No. OSHA-2012-0026. This notice is part of a preclearance consultation program that provides interested parties the opportunity to comment on OSHA's request for an extension by OMB of a previous approval of the information collection requirements found in the above Standard. The Agency did not receive any comments submitted in response to this notice.

The Whistleblower Protection Program conducts regular stakeholder meetings and targeted discussions with the whistleblower community and receives constant input from the public. The changes associated with the revision request were developed after learning the public was having problems navigating the online complaint form to file with the proper Federal agency. Some of the allegations in the complaints were not related to OSHA's Whistleblower Protection Program but OSHA wanted to help the complainant get to the Federal agency that could assist them.

In addition, since the Whistleblower Protection Program is identified as a HISP (High Impact Service Provider), which are those Federal entities designated by OMB to have high-impact customer-facing services (as defined in section 280.9), we are required to implement the guidance in sections 280.10 through 280.13, under OMB's Improving Customer Experience: OMB Circular A-11, Section 280 program. OSHA's Whistleblower Protection Program is 1 of 2 DOL programs identified as HISPs by OMB. OSHA works constantly with the public on

improving their experience with the Whistleblower Protection Program.

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 an OSHA whistleblower investigation, information contained in an investigative case file may be disclosed to the interested parties to resolve the complaint. Throughout this period, information about the complaining party and their employer will not be released to the public except to the extent allowed under the Privacy Act. However, once a case is closed, it is possible that information contained in the complaint, or an associated case file may be released to the public as required by the Freedom of Information Act (FOIA).

Thus, OSHA provides 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.

None of the provisions in these regulations require the collection of 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. 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 13.**

Employees filed 15,758 whistleblower complaints with OSHA under all the whistleblower provisions administered in Fiscal Year 2023.⁴ The agency estimates a 5% annual increase year-over-year, the next three years – 16,546, 17,373, and 18,242, respectively. To calculate burden hour and cost determinations, the agency estimates an average of 17,387 complaints per year.

Fiscal Year	Actual Complaints Received	Estimated Annual Increase in Complaints (5% annually)	Estimated Annual Complaints
2023	15,758	N/A	N/A
2024	-	788	16,546
2025	-	827	17,373
2026	-	869	18,242
<i>Total</i>			<i>52,161</i>
3-Year Average			17,387

Wage Rates

The agency determined the wage rate from the average of the hourly earnings for all employees on private nonfarm payrolls, reported in the Bureau of Labor Statistics (BLS), U.S. Department of Labor, *Employment Situation* News Release, September 2023 [last accessed: October 19, 2023]. (Employment situation data is available at <https://www.bls.gov/news.release/pdf/empisit.htm>.)

To derive the loaded hourly wage rate presented in the table below, the agency used data from the *Employment Situation* News Report, as described in the paragraph above. Then, the agency

⁴ Source: OSHA Information System, “Case Listing Legacy and OIS report.” Note, this data includes complaints received under all 25 statutes in FY 2023. In addition to the number of complaints filed leading to formal investigations, the agency includes the number of complaints filed by employees but not investigated, or “screen-outs,” for example, due to lack of agency jurisdiction to investigate the complaint.

applied to the wage rate a fringe benefit markup from the following BLS release: *Employer Costs for Compensation News Release* text; released 10:00 AM (EDT), Tuesday, September 12, 2023 (https://www.bls.gov/news.release/archives/ecec_09122023.htm). BLS reported that for private industry workers, fringe benefits accounted for 29.4% of total compensation and wages accounted for the remaining 70.6%. To calculate the loaded hourly wage for each occupation, the agency divided the mean hourly wage rate by 1 minus the fringe benefits.

Table 2, below, is a summary of how the wage rate estimate was derived for the information collection requirements specified in the standard.

Table 2 – Estimated Wage Rate				
Occupational Title	SOC Code	Mean Hour Wage Rate (A)	Fringe Benefits (B)	Loaded Hourly Wage Rate (C) = (A)/(1-(B))
Private Nonfarm Employees	N/A	\$29.06	.294	\$41.16

Burden Hour and Cost Summary

OSHA estimates that the initial filing of a complaint by an employee detailing the facts surrounding the alleged retaliation, either orally or in writing, or via the online electronic complaint system, requires approximately one hour to complete.

Burden hours: 17,387 complaints x 1 hour = 17,387 hours
Cost: 17,387 hours x \$41.16 = \$246,200 (rounded)

Table 3 –Estimated Annualized Respondent Hour and Cost Burden Table								
Information Collection Requirement	Type of Respondent	No. of Respondents	No. of Responses per Respondent	Total No. of Responses	Avg. Burden per Response (in hrs.)	Total Burden Hours	Loaded Hourly Wage Rate	Total Burden Costs (rounded)
Complaint Filing	Private Nonfarm Employee	17,387	1	17,387	1	17,387	\$41.16	\$246,200

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 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 consider 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, 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.**

Item 12 above provides the total cost of the information collection requirements specified by the standard. Therefore, there are no costs to the respondents other than their time.

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 estimated annualized cost to the Federal Government is \$727,004 (\$692,872 + \$14,742 + \$19,390), further detailed below:

Initial Complaint Review

The agency calculates the cost to the Federal Government to receive this information using the average investigator's pay (GS-12, step 5), as identified in the 2023 salary table, with a wage rate of \$39.85 per hour (available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries->

[wages/salary-tables/pdf/2023/GS_h.pdf](#)). The agency additionally estimates that it takes an investigator one hour to receive and review the initial complaint, for a total of 17,387 dedicated hours.

Burden cost: 17,387 hours x \$39.85 = \$692,872 (rounded)

Technical Development and Revising Costs

OSHA estimates that the technical development costs for revising the online complaint filing system will be approximately \$42,632 (which includes 11 weeks of total development/test costs as provided by the agency's Office of Information Technology Solutions).

OSHA's whistleblower program will also contribute approximately 40 hours of a program analyst's time (GS-12, step 5) for the development and launch of the revised online complaint filing system.

Burden cost: 40 hours x \$39.85 = \$1,594

Subtotal cost: \$42,632 + \$1,594 = \$44,226

The annualized development costs for revising the system over a three-year period are therefore estimated to be \$14,742 (\$44,226 divided over three years).

Continued Maintenance Costs

After the revised online complaint filing system is launched, OSHA estimates that it will incur annual costs of approximately \$19,390 to maintain the online filing system.

Other Operational Expenses

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.

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

OSHA is requesting a total adjustment increase in burden hours of 7,171 (from 10,216 to 17,387). The current requested adjustment increase is due to an increase in the agency's estimate of complaints received.

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.

OSHA lists current valid control numbers in §§ 1910.8, 1915.8, 1917.4, 1918.4, and 1926.5 and publishes the expiration date in the *Federal Register* notice announcing OMB approval of the information collection requirements (*See* 5 CFR 1320.3(f)(3)). OSHA believes that this is the most appropriate and accurate mechanism to inform interested parties of these expiration dates.

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.