

**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 (October 2016)**

This revision Information Collection Request (ICR) seeks OMB approval to implement a revised whistleblower complaint form, titled “Notice of Whistleblower Complaint,” Form OSHA 8-60.1. The Web-based form enables workers to submit whistleblower complaints directly to OSHA 24-hours a day, which provides workers with greater flexibility for meeting statutory filing deadlines. Additionally, the revised form includes interactive features which make the form easier to understand and complete. The revised form also provides information about worker protections enforced by other agencies, in order to better direct complainants to the proper investigative agencies. These changes will improve the quality of the customer service that 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 (“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

REGULATIONS CONTAINING PROCEDURES FOR HANDLING OF
RETALIATION COMPLAINTS
OMB Control No. 1218-0236
October 2016

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, 1985, 1986, 1987 and 1988 set forth the procedures for the handling of retaliation complaints¹ under these whistleblower provisions.

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.

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.

As stated above, the whistleblower provisions and regulations at 29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987 and 1988 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, 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, 1985, 1986, 1987 and 1988 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.

² 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).

OSHA is seeking OMB approval of this ICR revision in order to obtain clearance to implement proposed changes to the whistleblower complaint form, titled “Notice of Whistleblower Complaint,” (the OSHA 8-60.1; or “the form”) as part of this ICR. The revisions to this form will make the form more interactive, and will streamline the process for workers to complete the form. This will improve the quality of the customer service that the Agency can offer the public.

The Agency estimates almost 50% of whistleblower complaints are filed electronically. OSHA plans to offer the revised electronic version of the 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. Employees will also be able to print a copy of the completed electronic form, using the “Print this Complaint” button at the end of the completed form, and submit it to OSHA in hard copy by fax, mail, or hand-delivery.

The revised form will be available in both English and Spanish. A “screen-shot” document displaying the English version of the proposed form as revised is 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 will 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. Unlike the previous information and instructions pages, the revised introduction and instructions page will include a button which the worker must click in order to launch the online whistleblower complaint form, as well as a link to Whistleblower Protection Program’s website.

Once the employee launches the online whistleblower complaint form, the adverse action section of the form is made available. The adverse action section of the form explains that in order to have a valid complaint, a worker must allege that an employer took adverse action against the worker. 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. This section also provides a button the employee may click on if he or she has not suffered an adverse action. If the worker clicks this button, additional information appears in a pop-up box which explains that OSHA’s whistleblower protection laws only cover employees that 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 worker cannot

advance to the next section of the form until a type of adverse action has been selected. 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 information about filing deadlines that apply to each statute. This section of the form requests that the employee enter the date of the most-recent adverse action. 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 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 in order to be protected under the relevant whistleblower statute enforced by OSHA.

Once the employee has provided a date of the most-recent adverse action, the employee may continue to the next section of the form which 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 ten types of protected activity that are commonly alleged by whistleblowers, plus a residual “other” option for protected activities that are not listed. This information is required; the employee must select at least one type of protected activity in order to access the next section of the form. As long as a user selects at least one type of protected activity, the user may access the next section of the form. As described below, when users select certain options, pop-up boxes will appear that provide the user with additional information. However, these pop-up boxes are for informational purposes only, and do not screen out any complaints, or prevent any user from accessing subsequent sections of the form.

For employees who select the option alleging that the adverse action was in retaliation for the employee’s race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information, a pop-up box provides information about the U.S. Equal Employment Opportunity Commission (EEOC), as well as the EEOC’s website and toll-free hotline.

For employees who select the option alleging that the adverse action was in retaliation for complaining about failure to pay the minimum wage, overtime pay, wage recordkeeping, child labor, or family and medical leave requirements, a pop-up box provides information about the Wage and Hour Division (WHD) of the U.S. Department of Labor, as well as WHD’s website and toll-free hotline.

For employees who select the option alleging that the adverse action was in retaliation for complaining about migrant or seasonal worker protections, lie detector tests, or worker protections in certain temporary guest worker programs, a pop-up box provides information about the Wage and Hour Division (WHD) of the U.S. Department of Labor, as well as WHD's website and toll-free hotline.

For employees who select the option alleging that the adverse action was in retaliation for engaging in protected concerted activities (group action to improve wages, benefits, and working conditions), union activities, supported a union, or chose not to engage in union activities, a pop-up box provides information about the National Labor Relations Board (NLRB), as well as the NLRB's website and toll-free hotline.

Additionally, this section of the form asks optional questions about what reasons the employer gave for the adverse actions and if there is anything else the employee would like OSHA to know about what happened. This information is important for OSHA when determining whether to open an investigation.

Once the employee has selected a reason the adverse action occurred, the employee may continue to the next section of the form, which requests information about employee's employer who took the alleged adverse action. First, this section requests the company name. Next, the form asks whether the employer is a private or public sector employer. These fields are required; the fields are labeled as required and the employee cannot continue to the next section of the form until this information is provided.

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.

For employees who select the Federal employer option, a pop-up box explains to the employee that OSHA's whistleblower coverage for federal employees varies by statute. The pop-up box provides information about the Office of Special Counsel (OSC), including the OSC's website. The pop-up box also provides information about OSHA's Office of Federal Agency Programs (OFAP), including OFAP's website, as well as information about reporting safety and health hazards through a Designated Agency Safety and Health Officer.

For employees 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.

The information requested in this section about the employer is essential for OSHA to determine whether the Agency has jurisdiction over the complaint.

Once the employee 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. This section of the form requires that the employee indicate the state or U.S. territory in which the retaliation occurred. This section also allows the employee to enter information about the employer's street address, city, and 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 to for processing.

Once the employee has indicated the state in which the retaliation occurred, the employee 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.

The next section of the form requests the employee's information, including the employee's name, telephone, mailing address, email address, preferred method of contact, and best time to be contacted. 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. This information is essential because whistleblower complaints filed with OSHA cannot be filed anonymously.

The next section of the form is the Designated Representative section. Because the whistleblower 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 representative for purposes of the complaint.

The next section of the form is a new section that asks how the employee learned about OSHA's Whistleblower Protection Programs. 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.

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. This page also includes a “Print this Complaint” button, which allows the user to print the completed form.

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 (44 U.S.C. 3506(c)(2)(A)), OSHA has published a notice (81 FR 8103 (February 17, 2016); Docket No. OSHA-2012-0026) in the *Federal Register* requesting public comment on its proposed revision of the collection of information requirements associated with 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, 1983, 1985, 1986, 1987 and 1988. This revision includes a request to revise the complaint form used to file complaints electronically through OSHA's website. This notice is part of a preclearance consultation program that provides interested parties with an opportunity to comment on OSHA's request to approve the request for revision of the collection of information by the Office of Management and Budget (OMB). The Agency received three comments submitted in response to this notice.

On April 15, 2016, Geoff Daly, of MKD USA, LLC, submitted a comment to the ICR in which he recommended that the filing deadlines for whistleblower provisions administered by OSHA be increased to at least 180 days. A change to the statutory deadline would require additional rulemaking and is beyond the scope of the proposed revisions to the ICR and electronic complaint form. No agency action was taken in response to this comment.

On April 18, 2016, Farmworker Justice submitted a comment to the ICR in which it indicated its support for the proposed revisions to the ICR and the electronic complaint form. Farmworker Justice also urged OSHA to make the form available in other languages, such as Spanish. In response to this comment, OSHA will make the revised online complaint form available in both English and Spanish.

Also on April 18, 2016, David B. Leslie submitted a comment to the ICR in which he indicated his general support for the proposed revisions to the electronic complaint form, suggested a revision to the form, and outlined some of his concerns about OSHA's policies and procedures.

Mr. Leslie commented that the form is easy to view and submit, and expressed approval for OSHA's decision to include the phone number for OSHA's toll-free hotline for users who may have difficulty completing the form without assistance. He suggested, however, that OSHA's hotline number "may benefit from being in bolder type, as some [users] could have visual issues."

No actions were taken in response to this comment. OSHA believes that the proposed form sufficiently highlights OSHA's toll-free hotline number. On the Introduction and Instructions page of the electronic complaint form, the OSHA toll-free hotline number is included three different times, in both bolded and non-bolded typeface.

Mr. Leslie also indicated concern that OSHA's method for calculating the burden time and costs of the collection of information is "overly simplistic." 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) (see Item 2 of this Supporting Statement). Therefore, the burden hour calculation in Item 12 of this Supporting Statement accounts only for the time it takes an employee to file an initial whistleblower complaint with OSHA. The corresponding cost for the federal government to process the initial complaint, prior to investigation, is accounted for in Item 14 of this Supporting Statement. The Agency believes that its burden calculations for this ICR are reasonable estimates. No actions were taken in response to this comment.

Finally, Mr. Leslie provided suggestions on several aspects of OSHA's programs and policies, such as training and statutory filing deadlines, which are beyond the scope of the proposed

revisions to the ICR and electronic complaint form. No actions were taken in response to these comments.

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 Privacy Act. 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 Freedom of Information Act. 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 7,516 whistleblower complaints with OSHA under all of the whistleblower provisions that it administers in Fiscal Year 2015.³ It is further estimated that the initial filing of a complaint by an employee detailing the facts surrounding the alleged retaliation, either orally or in writing, requires approximately one hour to complete. Therefore, the total annual burden is 7,516 hours.

In the absence of more reliable information, the DOL has monetized the value of these burden hours by adjusting the wage estimate (from the November 2015 average hourly earnings of all employees on private nonfarm payrolls of \$25) upward by 46 percent to account for fringe benefits, thus reflecting the full value of respondent.⁴

$$7,516 \text{ hours} \times \$25.25 \times 1.46 \text{ fringe benefit factor} = \$277,077$$

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**

³ Source: OSHA Whistleblower IMIS, Investigation Data report and Screening Report, 11/02/2015. Note, this data includes complaints received under all 22 statutes in FY 2015, including complaints received under the Moving Ahead for Progress in the 21st Century Act (MAP-21). 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. This is the first ICR for which the Agency has reliable screening data available to quantify the number of complaints filed and screened-out. This partially accounts for the large increase in annual complaints filed as compared with previous ICRs (e.g., 2,872 estimated complaints in the 2012 ICR). Of the 7,516 complaints filed with OSHA in FY 2015, 4, 228 complaints were administratively closed. The introduction of the electronic complaint form in 2013 may also have contributed to the increase in complaints filed. In FY 2015, online complaints comprised nearly 50% of total number of complaints received, with over 3,700 complaints filed.

⁴ Wage Rate Source: [The Employment Situation—November 2015](http://www.bls.gov/news.release/archives/empsit_12042015.htm), DOL, Bureau of Labor Statistics, at p. 32 (http://www.bls.gov/news.release/archives/empsit_12042015.htm). Fringe Benefit Source: *Employer Costs Employee Compensation—September 2015*, DOL, Bureau of Labor Statistics, Table 1, *Civilian workers, by major occupational and industry group* (http://www.bls.gov/news.release/archives/ecec_12092015.htm). Fringe benefit factor excludes state, local and federal employees.

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 to the respondents other than their time that is calculated in Item A12 above.

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

The cost to the Federal Government to receive this information is the investigator's pay (GS-12, step 5), with a wage rate of \$38.12⁵ per hour, multiplied by the time it takes an investigator to receive and review the initial complaint (1 hour), or \$38.12 per investigation. **The total cost to government is 7,516 cases x \$38.12= \$286,510**

OSHA estimates that the technical development costs for revising the online complaint filing system will be approximately \$20,000 (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 \$41.48⁶) to the development and launch of the online complaint filing system, resulting in costs of approximately \$1,659. Taken together, OSHA estimates that it will cost \$21,659 to revise the online filing system and to make it available for public use. **Annualized development costs over a three-year period are estimated to be \$7,220 (\$21,659/3).**

After the revised online complaint filing system is launched, OSHA estimates that it will incur annual costs of approximately \$10,350 to maintain the online filing system. These estimated costs are based on the need for approximately 115 hours of work each year related to development, network support, and database administration.

5 Source: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/15Tables/html/RUS_h.aspx.

6 Source: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/15Tables/html/DCB_h.aspx.

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 annualized cost to the Federal Government is \$304,080 (\$286,510 + \$7,220 + \$10,350).

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

OSHA received 7,516 complaints in Fiscal Year 2015, 4,644 more complaints than the 2,872 complaints estimated in the existing ICR. 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. This is the first ICR for which the Agency has reliable screening data available to quantify the number of complaints filed and screened-out. This partially accounts for the large increase in annual complaints filed as compared with previous ICRs (e.g., 2,872 estimated complaints in the 2012 ICR). Of the 7,516 complaints filed with OSHA in FY 2015, 4,228 complaints were administratively closed. The introduction of the electronic complaint form in 2013 may also have contributed to the increase in complaints filed. Thus, OSHA is requesting a total adjustment increase in burden hours of 4,644, from 2,872 to 7,516. The Agency does not believe that the proposed revisions to the electronic complaint form 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.

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 the printable, electronic 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

REGULATIONS CONTAINING PROCEDURES FOR HANDLING OF
RETALIATION COMPLAINTS
OMB Control No. 1218-0236
October 2016

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