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OSHA Docket Office
U.S. Department of Labor
Occupational Safety and Health Administration,
Room N-2625, 200 Constitution Ave, NW.
Washington, DC 20210

April 16, 2016

RE: Docket No. OSHA-2012-0026 *Regulations Containing Procedures for Handling of Retaliation Complaints; Revision of Approved Information Collection (Paperwork) Requirements for Office of Management and Budget (OMB) Approval*

I would like to express my gratitude to the Agency¹ for the opportunity to address these considerations. This letter serves to express my opinions regarding components of the topics illuminated in *Section II of the Supplementary Information of the Request, "Special Issues for Comment"*.

To introduce myself, my name is David Leslie and I am a Health, Safety & Environment (HSE) professional who has held positions in the electrical construction and maintenance field, with a focus on commercial, industrial and utility projects. Throughout my career, I have had the opportunity to observe many types of operations both in the field and at the system level. With the analysis of complex socio-technical interactions comes a holistic perspective on how individuals and groups communicate for the success or failure of their respective endeavors. I should reinforce that my experience and expertise are rooted in the occupational HSE field and the concepts to which I refer are limited to that world in terms of policy, both regulatory and consensus.

The first of these *issues*, "*Whether the proposed collections of information are necessary for the proper performance of the Agency's functions, including whether the information is useful*" should garner an affirmative response. As the discipline of safety has evolved to consider the complexity of human, mechanical, system and latent causes of failures, the influence of management as a resourcing and culture²

¹ The term "Agency" is used interchangeably with Occupational Health and Safety Administration or OSHA.

² Culture is defined here as the sum total of characteristics of the system in which the worker inhabits and is affected by within the context of their respective position at a company.

influencer, as well as a socio-economically biased opportunity for exploitation of the worker. Without adapting to the broadening perspectives provided by academic research and the information provided by statistical analysis, our society will not recognize chances to remove pressures that have considerable negative social consequences.

The necessity for utilizing broad sources of information to determine whether someone's rights have been violated should be an expected part of due diligence and built into the system's guidelines. As a metric of the efficacy of the Agency's success as a regulatory entity, the importance of multiple types and volumes of data is apparent. Any regulatory body tasked with representing an entire population of working Americans must establish robust systems to not only ensure the data being gathered is adequate to accomplish the mission of protecting worker rights, but also to gauge whether the analytics collected are in large enough quantity to demonstrate the U.S. population perceives it can seek justice. Alternatively, the Agency has to have tools that can measure the qualitative value of that participation.

If OSHA were to have unlimited resources to collect and review data from multiple origins in order to define success or failure, it would not have to prioritize. However, as this is not reality it must remain vigilant with regard to determining of the extent of the worst type of violations. Without this, there will be a further weakening of worker's rights under the pressures of limited perspective and short-term thinking.

After review of the current OSHA website's whistleblower complaint process, one cannot help but remark about the ease to view and submit the form. If one cannot complete the form without assistance, a number is available. The challenges lie with creating an accessible for all workers and the process may not be so easy to manage for non-computer literate people, or people with disabilities, for example, older workers or foreign workers. The number may benefit from being in bolder type, as some could have visual issues.

The second issue, *"The accuracy of OSHA's estimate of the burden (time and costs) of the collections of information, including the validity of the methodology and assumptions used"* calls for an adjustment like the change between 2872 to 7516 burden hours³, as this does correlate with an increased volume of reporting. However, the Agency's association of a single hour to process a report seems overly

³ OSHA-2012-0026-0007, Section III Proposed Actions

simplistic, especially as it relates to analyzing reports from different agencies. If the full width and breadth of the initial processing of the report was standardized in terms of the content required by the input fields already in use on OSHA.Gov, then perhaps a uniform expectation of time for staff to handle the information and direct it to the appropriate resource is logical. At this point, the allocation of resources by the OMB as it relates to the management of resourcing seems nebulous.

One cannot deny the overlap between the management of health and safety issues with the addition of environmental concerns. Since my concern lies with the reality that a representative of the Agency will manage reports beyond their purview, in that case there may need to be additional training to compensate for the limitations of the information gathering tools and the human deficits in knowledge. As with any profession, but especially HSE, the specializations of the employee create challenges to the ability to articulate abstract concepts. If a member of an organization or a regulatory body has the responsibility to document impropriety, they should have the requisite skills to explain the violation of the law. I can envision problems' arising from both sides having to manage the explanation of a *Toxic Substances Control Act (TSCA)* violation, when one or both of the parties is not well versed in the requirements of *EPA CFR 40*.

Thirdly, the Agency must develop the most thorough vision of "*the quality, utility, and clarity of the information collected*" as it has been tasked with implementing the *Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A))*. The burden of allowing for standardization of the data collection while not sacrificing its authority and responsibility to the American worker does pose challenges. As with any investigatory body, the need to maintain protocols and processes in the face multiple sources of pressure is constant. The information must be managed so the bulk of the population is served. Unfortunately, this can lead to a minimization or under prioritization of critical evidence.

On the Agency's side, I suspect the solutions lie within a multi-tiered approach to training of the data processing and investigation personnel, thus assuring the competence and qualification of those performing the preliminary and full review of all complaints. Standardized initial and annual re-training with periodic content review and updating by the directorate should bolster the selection and designation of those tasked with managing investigations. This should include not only verification of acceptable

credentials, but also a solid understanding of case law. If the Agency wishes to diminish the amount of silenced voices, it must win cases by the preponderance of evidence. Any resilient organization will have continuous improvement concepts built into its operational framework. In the name of full disclosure, it would be beneficial if the Agency shared its instructional methodology with the public, perhaps seeking public comment on the core competencies of its agents. It may even model its training curriculum against successful other agencies with high success rates.

Without having read or analyzed the information gathering against the success rate of whistleblower cases making it to dispute resolution, I must wonder if there are blatant socio-cultural factors as fundamental drivers of success or failure of the process. With subjects as diverse as ours, a hugely varied population in terms of education and language, with the Agency taking the lead as an investigatory body, there needs to be a vehicle for reconciling all of the sources and the quality of the data.

The fourth issue, *“Ways to minimize the burden on individuals who must comply; for example, by using automated or other technological information collection and transmission techniques”* needs evaluation for efficacy. There will be a minimum amount of energy expended upon both sides of the information exchange. The interface between the public and regulator can be productive or destructive.

As OSHA has a Memorandum of Understanding with other agencies, by what formula is the allocation of time for initial processing and timeliness decided across differing legislation? There is limited uniformity in the filing deadlines and the *“statutory timeframes for investigation”* (Note Table II-1 & Table II-2 in the *OSHA Whistleblowers Investigation Manual*) and the cause for this is unclear. If the reason for such disparate levels is driven by arbitrary factors, then there is an opportunity for standardization. However, if the differences are the product of the two burden of proof categories, *“motivating or contributory”*⁴, then the Agency should provide justification.

As the prima facie requirement is a minimum criterion, then how do persons without a particular skillset recognize the need for subject matter specific information without hastily removing cases from

⁴ Terms taken from the *Occupational Safety and Health Administration Directorate of Whistleblower Protection Programs (DWPP) Whistleblower Statutes Desk Aid*

potential investigation? While the Agency has obviously made a significant effort in its holistic application of the procedures for investigation, the term “screened out” may pose an undue pressure on members of the public and in-turn limit the detailed review the cases deserve. Even with “*equitable tolling*”⁵, the opportunity for minimization is a constant risk.

Appendix 1.

Table II-1: Specific statutes and their filing deadlines	
Statute	Filing Deadline
OSHA	30 days
CAA, CERCLA, FWPCA, SDWA, SWDA, TSCA	30 days
ISCA	60 days
AHERA, AIR21	90 days
STAA, ERA, SOX, PSIA, FRSA, NTSSA, CPSIA, ACA, CFPA, SPA, FSMA	180 days
Table II-2. Statutory Time Frames for Investigation	
Statute	Time Frame
CAA, CERCLA, FWPCA, SDWA, SWDA, TSCA, ERA, ISCA	30 days
STAA, AIR21, SOX, PSIA, FRSA, NTSSA, CPSIA, ACA, CFPA, SPA, FSMA	60 days
OSHA, AHERA	90 days

The Agency’s endeavors are incredibly complex and further complicated by its apparent success at implementing a series of models for information gathering. With such a dynamic environment to control, the necessity for adequate resourcing is critical to the mission of providing a beacon of hope to those in the midst of dangerous or life threatening situations.

Thank you very much for the opportunity to provide my perspective.

⁵ Term taken from *Section IV. Timeliness of Filing OSHA Whistleblowers Investigation Manual*

Appendix 2:

OSHA-2012-0026-0007, Section III Proposed Actions

Occupational Safety and Health Administration Directorate of Whistleblower Protection Programs (DWPP) Whistleblower Statutes Desk Aid

OSHA Whistleblowers Investigation Manual