



OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Occupational Safety and Health Review Commission (OSHRC) is revising the notice for Privacy Act system-of-records OSHRC-4.

DATES: Comments must be received by OSHRC on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The revised system of records will become effective on that date, without any further notice in the *Federal Register*, unless comments or government approval procedures necessitate otherwise.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: rbailey@oshrc.gov. Include "PRIVACY ACT SYSTEM OF RECORDS" in the subject line of the message.
- Fax: (202) 606-5417.
- Mail: One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.
- Hand Delivery/Courier: same as mailing address.

Instructions: All submissions must include your name, return address, and e-mail

address, if applicable. Please clearly label submissions as “PRIVACY ACT SYSTEM OF RECORDS.”

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606-5410, or via e-mail at rbailey@oshrc.gov.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as OSHRC to publish in the *Federal Register* notice of any new or modified system of records. OSHRC published a modified system-of-records notice for OSHRC-4 on November 13, 2018, 83 FR 56380. In response to a comment received from the U.S. Equal Employment Opportunity Commission (EEOC), OSHRC is revising the opening paragraph to its routine uses to specify that disclosure of medical and/or genetic information pursuant to these uses is limited by Section 501 of the Rehabilitation Act of 1973 and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008. These statutes and the regulations implementing them, as set forth in 29 CFR pt. 1630 (Rehabilitation Act) and 29 CFR pt. 1635 (GINA), specify the circumstances under which federal agencies may disclose protected medical and/or genetic information. Pointing to Routine Uses 3 and 4 as examples, the EEOC commented that, as currently drafted, the system-of-records notice “would permit disclosure of protected medical and/or genetic information in system records in circumstances beyond what the Rehabilitation Act and GINA permit.” As detailed below, OSHRC is revising the opening paragraph to its routine uses to limit disclosure of such information in accordance with these statutory and regulatory requirements.

The revised routine use section of OSHRC-4 is provided below.

System Name and Number: Payroll and Related Records, OSHRC-4.

Security Classification: None.

System Location: (1) Paper and electronic files are maintained by the Office of the Executive Director, OSHRC, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036-3457; (2) pursuant to an interagency agreement, payroll records are stored electronically by the U.S. Department of Agriculture, National Finance Center (NFC), P.O. Box 60000, New Orleans, LA 70160-0001.

System Manager(s): Human Resources Specialist, OSHRC, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036-3457; (202) 606-5100.

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Routine Uses of Records Maintained in the System, including Categories of Users

and Purposes of Such Uses: In addition to disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected, and to the extent disclosure of any medical and/or genetic information is in compliance with Section 501 of the Rehabilitation Act of 1973 and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008. With respect to medical and genetic information protected under the Rehabilitation Act and/or GINA, records will be withheld or redacted to comply with the specific confidentiality and disclosure requirements set forth by the U.S. Equal Employment Opportunity Commission at 29

CFR pt. 1630 (Rehabilitation Act) and 29 CFR pt. 1635 (GINA). With these limitations, records may be disclosed as a routine use:

(1) To the Department of Justice (DOJ), or to a court or adjudicative body before which OSHRC is authorized to appear, when any of the following entities or individuals—(a) OSHRC, or any of its components; (b) any employee of OSHRC in his or her official capacity; (c) any employee of OSHRC in his or her individual capacity where DOJ (or OSHRC where it is authorized to do so) has agreed to represent the employee; or (d) the United States, where OSHRC determines that litigation is likely to affect OSHRC or any of its components—is a party to litigation or has an interest in such litigation, and OSHRC determines that the use of such records by DOJ, or by a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation.

(2) To an appropriate agency, whether federal, state, local, or foreign, charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes civil, criminal or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

(3) To a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an OSHRC decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the

issuance of a license, grant or other benefit.

(4) To a federal, state, or local agency, in response to that agency's request for a record, and only to the extent that the information is relevant and necessary to the requesting agency's decision in the matter, if the record is sought in connection with the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit by the requesting agency.

(5) To an authorized appeal grievance examiner, formal complaints manager, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee, only to the extent that the information is relevant and necessary to the case or matter.

(6) To OPM in accordance with the agency's responsibilities for evaluation and oversight of federal personnel management.

(7) To officers and employees of a federal agency for the purpose of conducting an audit, but only to the extent that the record is relevant and necessary to this purpose.

(8) To OMB in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process, as set forth in Circular No. A-19.

(9) To a Member of Congress or to a person on his or her staff acting on the Member's behalf when a written request is made on behalf and at the behest of the individual who is the subject of the record.

(10) To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To appropriate agencies, entities, and persons when: (a) OSHRC suspects or has confirmed that there has been a breach of the system of records; (b) OSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OSHRC, the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(12) To NARA, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. § 552(h), to review administrative agency policies, procedures and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(13) To another federal agency or federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) To the Internal Revenue Service (IRS) for investigation, and to private attorneys, pursuant to a power of attorney.

(15) To the IRS, a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement.

(16) To state, city, or other local jurisdictions which are authorized to tax the employee's compensation, a copy of an employee's Form W-2. The record will be provided in accordance with a withholding agreement between the state, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

(17) To a city, copies of executed city tax withholding certifications, pursuant to a withholding agreement between the city and the Department of the Treasury (5 U.S.C. 5520), and in response to written requests from an appropriate city official to OSHRC's Office of the Executive Director.

(18) To NFC to effect issuance of paychecks via electronic fund transfers (EFT) to employees, and distribution of allotments and deductions to financial and other institutions, and for other authorized purposes.

(19) To the Federal Retirement Thrift Investment Board to update Section 401K type records and benefits; to the Social Security Administration to establish social security records and benefits; to the Department of Labor, Office of Worker's Compensation to process compensation claims; to the Department of Defense to adjust military retirement; to health insurance carriers to process insurance claims; and to the

Department of Veterans Affairs for the purpose of evaluating veteran's benefits to which the individual may be entitled.

(20) To other federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States, pursuant to sections 5 and 10 of the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996.

(21) To other federal, state, local or foreign agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals. When disclosures are made as part of computer matching programs, OSHRC will comply with the Computer Matching and Privacy Protection Act of 1988, and the Computer Matching and Privacy Protections Amendments of 1990.

(22) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and state of hire of employees for the purpose of locating individuals to establish paternity, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 653(n).

(23) To "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) in accordance with 31 U.S.C. 3711(f).

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History: April 14, 2006, 71 FR 19556; August 4, 2008, 73 FR 45256; October 5, 2015, 80 FR 60182; September 28, 2017, 82 FR 45324; November 13, 2018, 83 FR 56380.

Dated: February 25, 2019.

Nadine N. Mancini,

General Counsel, Senior Agency Official for Privacy.

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