

the final determination may not be delegated to another agency.

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§§ 2205.171–2205.999 [Reserved]

**PART 2400—REGULATIONS  
IMPLEMENTING THE PRIVACY ACT**

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AUTHORITY: 5 U.S.C. 552a(f); 5 U.S.C. 553.

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**§ 2400.1 Purpose and scope.**

The purpose of the provisions of this part is to provide procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). This part is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated on behalf of OSHRC, pursuant to a contract, to accomplish an agency function, except for records that are disclosed to consumer reporting agencies under section 3711(e) of title 31, United States Code. This part is not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure, which are published at 29 CFR 2200.1 *et seq.*

**§ 2400.2 Description of agency.**

The Commission adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651–677). Decisions of the Commission on such actions are issued only after the parties to the case are afforded an opportunity for a hearing

in accordance with section 554 of title 5, United States Code. All such hearings are conducted by an OSHRC Administrative Law Judge at a place convenient to the parties and are open to the public. Each Commission member has the authority to direct that a decision of a Judge be reviewed by the full Commission before becoming a final order. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

**§ 2400.3 Delegation of authority.**

(a) The Chairman shall designate an OSHRC employee as the Privacy Officer, and shall delegate to the Privacy Officer the authority to ensure agency-wide compliance with this part.

(b) Custodians of the systems of records are responsible for the following:

(1) Adhering to this part within their respective units and, in particular, collecting, using and disclosing records, and affording individuals the right to inspect, obtain copies of and correct records concerning them;

(2) Reporting the existence of systems of records, changes to the contents of those systems and changes of routine use to the Privacy Officer, and also establishing the relevancy of records within those systems; and

(3) Maintaining an accurate accounting of each disclosure in conformance with § 2400.4(c) of this part.

**§ 2400.4 Collection and disclosure of personal information.**

(a) The following rules govern the collection of personal information throughout OSHRC operations:

(1) OSHRC shall:

(i) Solicit, collect and maintain in its records only such personal information as is relevant and necessary to accomplish a purpose required by statute or executive order;

(ii) Maintain all records which are used by OSHRC in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

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(iii) Collect information, to the greatest extent practicable, directly from the subject individual when such information may result in adverse determinations about an individual's rights, benefits or privileges under Federal programs; and

(iv) Inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what authority it is solicited, the principal purposes for which it is intended to be used, the routine uses which may be made of it, and any penalties or consequences known to OSHRC which shall result to the individual from such non-disclosure.

(2) OSHRC shall not discriminate against any individual who fails to provide personal information unless that information is required or necessary for the conduct of the system or program in which the individual desires to participate. See § 2400.4(a)(1)(i).

(3) No record shall be collected or maintained which describes how any individual exercises rights guaranteed by the First Amendment unless the Commission specifically determines that such information is relevant and necessary to carry out a statutory purpose of OSHRC, and the collection or maintenance of the record is expressly authorized by statute or by the individual about whom the record is maintained, or unless the record is pertinent to and within the scope of an authorized law enforcement activity.

(4) OSHRC shall not require disclosure of any individual's Social Security account number or deny a right, privilege or benefit because of the individual's refusal to disclose the number unless disclosure is required by Federal law.

(b) *Disclosures—(1) Limitations.* OSHRC shall not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(2) *Exceptions.* A record may be disseminated without satisfying the requirements of paragraph (b)(1) of this section if disclosure is made:

(i) To a person pursuant to a requirement of the Freedom of Information Act (5 U.S.C. 552);

(ii) To those officers and employees of OSHRC who have a need for the record in the performance of their duties;

(iii) For a routine use as contained in the system notices published in the FEDERAL REGISTER;

(iv) To a recipient who has provided OSHRC with adequate advance written assurance that the record shall be used solely as a statistical reporting or research record, and the record is to be transferred in a form that is not personally identifiable;

(v) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual;

(viii) To another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if such activity is authorized by law and if the head of the agency or instrumentality has made a written request to OSHRC specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the Government Accountability Office;

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(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with section 3711(e) of title 31, United States Code.

(3) *Employee credit references.* OSHRC's Office of Administration shall verify the following information provided by an employee to a credit bureau or commercial firm from which an employee is seeking credit: Length of service, job title, grade, salary, tenure of employment, and Civil Service status.

(4) *Employee job references.* Prospective employers of an OSHRC employee or a former OSHRC employee may be furnished with the information in paragraph (b)(3) of this section in addition to the date and reason for separation, if applicable, upon the request of the employee or former employee.

(5) *Disclosures to third parties.* Prior to disseminating any record about an individual to any person other than an agency, unless the record is disseminated pursuant to paragraph (b)(2)(i) of this section, OSHRC shall make reasonable efforts to ensure that the record is accurate, complete, timely and relevant.

(6) *Anticipated legal action.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(c) *Accounting of disclosures*—(1) OSHRC shall maintain an accurate accounting of each disclosure, except for any disclosure made pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(2) When an accounting is required under paragraph (c)(1) of this section, the following information shall be recorded: The date, nature, and purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(3) The accounting shall be maintained for at least five (5) years after disclosure or for the life of the record, whichever is longer.

(4) The accounting shall be made available to the individual named in the record upon inquiry, except for disclosures made pursuant to paragraph (b)(2)(viii) of this section relating to

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law enforcement activities. See § 2400.6 for suggested form of request.

### § 2400.5 Notification.

(a) *Notification of systems.* The following procedures permit individuals to determine the types of systems of records maintained by OSHRC.

(1) Upon written request, OSHRC shall notify any individual whether a specific system named by him contains a record pertaining to him. See § 2400.6 for suggested form of request.

(2) Upon establishing or revising a system of records, OSHRC shall publish in the FEDERAL REGISTER a notice of the existence and character of the system of records. This notice shall contain the following information:

- (i) System name and location;
- (ii) Security classification;
- (iii) Categories of individuals covered by the system;
- (iv) Categories of records in the system;
- (v) Authority for maintenance of the system;
- (vi) Purpose(s) of the system;
- (vii) Routine uses of records maintained in the system, including categories of users and the purpose(s) of such uses;
- (viii) Disclosures to consumer reporting agencies;
- (ix) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system;
- (x) System manager(s) and address;
- (xi) Procedures by which an individual can be informed whether a system contains a record pertaining to himself, gain access to such record, and contest the content, accuracy, completeness, timeliness, relevance and necessity for retention of the record;
- (xii) Record source categories; and
- (xiii) Exemptions claimed for the system.

(3) OSHRC shall submit a report, in accordance with guidelines provided by the Office of Management and Budget (OMB), in order to give advance notice to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security