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Records with Rule Attached

R & D CENTER FML-20
C. W. BICKERSTAFF, ADMSTR.
IND. HYGIENE



KWBB-0032170

From: (W) Building, Room 2060
WIN: 235-3476 or 3916
Date: July 25, 1980
Subject: OSHA Access to Employee Exposure
and Medical Records Rule - 1910.20

To: PERSONNEL RELATIONS MANAGERS
PERSONNEL RELATIONS REPRESENTATIVES
INDUSTRIAL HYGIENE AND SAFETY COORDINATORS
MEDICAL DEPARTMENTS
(FML-16, 17, 20 and 45)

The new OSHA standard on access to employee exposure and medical records is scheduled to become effective August 21, 1980. It is the Westinghouse position that this new standard is illegal in that it far exceeds the scope of authority delegated by Congress to the Occupational Safety and Health Administration. The Labor Law Section of the Corporate Personnel Department has indicated that the validity of this standard will be challenged in the courts before its effective date. In addition, even prior to the announcement of this new standard, NIOSH had sued Westinghouse in the U.S. District Court in Pittsburgh to obtain access to medical records at one of our facilities. We defended the suit primarily on the basis of our employees' right to privacy, but the District Court judge rejected our position. The case is now on appeal, and we await the appellate decision.

The Corporate posture in relation to the new standard will be one of respectful non-compliance with its provisions pending the outcome of the legal challenge to it that we expect to be filed. Until further notice, no industrial hygiene, safety or medical records shall be given to government or employee representatives unless approval is obtained from the Manager, Corporate Safety for industrial hygiene and safety records; or the Corporate Medical Services Administrator for medical records; or, in their absence, the Labor Law Section of the Corporate Personnel Department. In those instances where there are differences between this notice and Management Directive MD-P66, Privacy of Personal Information; Corporate Procedure CP-E10, Employee Record Files; and other guidelines, this notice supercedes such earlier instruction until you are otherwise advised. We will keep you informed of developments concerning the legal challenge to the new standard and also concerning our NIOSH litigation.

Paul Palmieri
Paul Palmieri, Manager
Corporate Safety

H. B. Burr
Harry B. Burr, Administrator
Medical Services

Discard Date:



IN RE: ABRAMS November 1992

OUTLINE
OSHA - Final Rule
Access to Employee Exposure and Medical Records

This Rule, which was published May 23, 1980 (45 F.R. 35211, 35277), amends 29 C.F.R. §1910.20 to provide employees and designated representatives a right of access to relevant exposure and medical records. The Rule, which takes effect on August 21, 1980 also gives OSHA the right of access to these records. Its stated purpose is to foster both direct and indirect improvements in the detection, treatment, and prevention of occupational disease.

The Rule applies to virtually any employer who makes, maintains, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents. The Rule applies to all employee exposure and medical records and analyses thereof, whether or not the records are related to specific occupational safety and health standards. Its provisions are geared to mandate preservation of and access to such records regardless of the manner in which they are made or maintained.

In summary form, below are several key definitions provided in the Rule:

- (1) "Access" means the right and opportunity to examine and copy.
- (2) "Employee Exposure Record" means a record containing any information concerning employee exposure to toxic substances or harmful physical agents such as environmental monitoring data, biological monitoring results, material safety data sheets, or, in the absence of the above, any other record which reveals the identity of a toxic substance or harmful physical agent.

- (3) "Employee Medical Record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:
 - (A) Medical and employment questionnaires or histories (including job description and occupational exposures),
 - (B) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring),
 - (C) Medical opinions, diagnoses, progress notes, and recommendations,
 - (D) Descriptions of treatment and prescriptions, and
 - (E) Employee medical complaints.
- (4) "Analysis Using Exposure Or Medical Records" means any compilation of data, research, statistical or other study which is based at least in part on information collected from individual employee exposure or medical records, provided that the analysis is known to the employer or no further work is being done by those responsible for preparing the analysis.
- (5) "Record" means any item, collection or grouping of information regardless of the form or process by which it is maintained.

- (6) "Designated Representative" means any individual or organization given written authorization to exercise a right of access.

The record subject to the Rule must be preserved for the period of employment plus 30 years except health insurance claim records which are maintained separately from the employer's medical program. With some exceptions, employee exposure records must be preserved and maintained for the same period of time. The same period is prescribed for retention of analyses using exposure or medical records.

Section (e) of the Rule, which is divided into three parts, details the substantive and procedural requirements of assuring access. Under subsection (1), the general access provision, once a request is made the employer must provide to the employee or his designated representative access to the records within 15 days. The employer is required to provide access to the records without cost; however, when a record has been previously provided, the employer may charge reasonable administrative costs for providing additional copies of the record except that the employer cannot charge for an initial request to copy information that has been added to the record previously provided. Subsections (2) and (3) deal specifically with the requirements pertaining to "employee/ designated representative access" and "OSHA access" respectively.

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The Rule does not prohibit an employer from deleting any trade secret data from the records requested. However, despite any trade secret claims, the employer is required to provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the relevant records.

The Rule also requires employers to provide employees with certain information regarding access rights and places certain other obligations on the employer in the event of sale or disposition of plant facilities.

The following are considered highlights of the Rule:

HIGHLIGHTS

Applies to all employers in general industry, maritime and construction whose employees are exposed to toxic substances or harmful physical agents.

Applies to all employer-generated exposure medical records, regardless of whether created in-house or on contract.

Employers must maintain exposure records and analyses based on exposure or medical records for thirty years.

Employers must maintain medical records for employment plus thirty years.

Certain background data for exposure records need only be kept for one year.

Key terms of the Rule are defined in detail.

Employers are provided complete flexibility as to the form or manner in which records are to be maintained, except that X-rays must be kept in their original state.

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Employers are given flexibility in providing access in a reasonable time, place and manner, but in no event later than fifteen days after a request is made.

Employers are given flexibility in responding to requests for copies of records, including charging reasonable costs for repeat requests.

An employee and his/her designated representative are assured access to all exposure records relevant to the employee, including records of other employees.

An employee and his/her designated representative are assured access to medical records of which the employee is the subject. Access to the medical records of another employee is provided only upon the specific written consent of that employee. The Rule provides a suitable sample authorization form.

Physicians on behalf of employers are encouraged to discuss with employees the contents of their medical records, and may recommend means of disclosing medical records other than by direct worker access.

A physician may, on behalf of an employer, disclose information on specific diagnoses of terminal illness or psychiatric conditions only to an employee's designated representative, and not directly to the employee.

An employee and his/her designated representative are assured access to analyses using exposure or medical records concerning the employee's working conditions or work place.

Unions are assured access to exposure records and analyses using exposure or medical records, but are not provided access to medical records absent an employee's written consent.

Employers must provide OSHA with immediate access to records covered by the Rule.

Employers are provided flexibility to protect trade secret information subject to employee and designated representative access. Employers may condition access upon a written agreement not to abuse the trade secrets.

Employees are to be provided annual information concerning their rights under the Rule.

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Gulf and U. S. Steel

Issued a letter to each plant and division manager and Industrial Hygiene and Safety personnel summarizing 1910.20 standard and recommended how to respond to inquiries from employees. Each location was to comply with the standard; however, no guidelines to date have been issued outlining recommended plant compliance program.

Rockwell

Issued a letter to each plant and division manager, and Industrial Hygiene and Safety personnel summarizing the 1910.20 standard and included a copy of the standard.

A general recommended compliance program including: using a notice on the bulletin board, maintaining a log of requests, and instructions to inform headquarters of unusual requests for records. When records are given, following a request, results are to be reviewed and explained in layman's terms.

Alcoa and Mobay

Issued a letter to each plant and division manager, and Industrial Hygiene and Safety personnel summarizing 1910.20 standard. An enclosed poster was also issued for posting in appropriate areas.

They are still considering how long the poster should be posted and how to respond to requests for records.

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IN THE AIRMAILS

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NOTICE

TO: _____ Employees

SUBJECT: Occupational Safety and Health Administration (OSHA)
Standard Access to Medical and Exposure Records

OSHA has issued an Access Standard, effective August 21, 1980, which gives each employee the right to review and to request a copy of the individual employee's own medical record and work exposure record.

Under the standard an employee also has the right to give written permission for another person (physician, bargaining agent, or other responsible individual) to have the right to review and/or obtain a copy of the individual's record. The employee should indicate in writing who should have access to the record, what information should be made available, and for what purpose the information will be used. If the employee authorizes another person to have access to his medical record, he may first wish to meet with the plant physician to clarify what information should be released.

The standard also gives OSHA the right of access to an employee's medical record without the employee's approval. An employee will be notified if OSHA seeks access to his/her medical record.

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An employee who wishes to review his/her medical record should contact _____ on extension _____ for
(plant physician)

an appointment. For a review of work exposure records the employee should contact _____ on
(industrial hygienist)
extension _____.

If you wish to inspect a copy of the standard, contact
_____ on extension _____.

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UNITED STATES

LOG OF OSHA RECORDS ACCESS RULE

<u>Requested Records</u>	<u>Requested By and Date</u>	<u>Records Submitted and Date</u>	<u>Who Submitted Records and Date</u>	<u>To Whom Records Were Submitted and Date</u>
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NOVEMBER 1992

INT. RELS. ABRAMS

UNITED STATES

November 1992

GUIDELINES RE: OSHA RECORDS ACCESS RULE

The following compliance guidelines are being established for the purpose of enabling personnel to meet the corporate objective of complying with various government regulatory laws. These guidelines are not designed to deal with every possible question which can be raised. Questions of general and far-reaching policy will be dealt with in future communications.

GENERAL OBLIGATIONS OF

1. must inform exposed employees upon hire and at least annually thereafter of the existence, location, and availability of records covered by the Rule, (see Notice attached), and make readily available a copy of the Rule itself.
2. Exposure records and analyses using exposure or medical records must be preserved and maintained for thirty years.
3. Employee medical records must be preserved and maintained for the duration of employment plus thirty years.
4. must absorb all expenses necessary to preserve and retain relevant records for the above-stated periods.

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UNIT: ABRAMS

GENERAL PROCEDURES APPLICABLE TO ANY REQUESTER

1. will refuse access to exposure information when the unit can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

2. shall refuse to copy for a requester any record that has been previously provided (copied) unless the record contains additional information or unless the requester agrees to bear the cost of such copying.

3. shall keep and maintain all relevant records in the manner in which they are presently maintained. If the medical records are not in the Company's custody, the unit will state their location (medical institution or physician's office) to the requester and make every effort to obtain the records.

EMPLOYEE REQUESTS

Discussion: All past and present employees must upon written request (ACCESS REQUEST - Form _____ attached) be granted access to (1) exposure records, (2) medical records, and (3) analyses using exposure or medical records. Access must be provided at a reasonable time, place, and manner. What is "reasonable" depends on the circumstances; however, the Rule requires that the employer's work schedule need not be unduly disrupted or the employee unduly inconvenienced.

Procedures:

1. Employee access shall not be provided during their regular working hours.

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2. Access must be provided within fifteen calendar days of a request.

3. The Company shall withhold (by deletion) from the employee, but not the designated representative, medical information relating to terminal illness or psychiatric condition that, in the physician's opinion, would be detrimental to the employee's health. In such cases employees will be informed of the deletion and encouraged to use their personal physician as designated representative.

4. After review, should the employee request copies of the records, the Company shall make arrangements for the employee to obtain a copy of the requested records. No original records of any type are to be given to the employee at any time except for inspection and review purposes.

5. An ACCESS REQUEST (Form _____) must be obtained when the employee requests his own medical records. This will serve to document an authorized release of medical information should that information somehow find its way into the hands of a third party.

6. shall refuse access to employee's portions of analyses using medical records containing personal identifiers, if it can be shown that removal of the personal identifier portions is not feasible. (If deletion is feasible, has the obligation to delete personal identifier information.)

7. shall delete trade secret data which discloses manufacturing processes or the percentage of a chemical substance in a mixture. The employee must be notified of the deletion, however. As an alternative, can secure a confidentiality agreement from the employee.

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IN RE: ALBRAMS

DESIGNATED REPRESENTATIVE'S REQUEST

Discussion: Under the Rule there are two types of "designated representatives": (1) the employee's collective bargaining agent and (2) any other third party.

Procedures for the Collective Bargaining Agent:

1. The same procedures as listed under EMPLOYEE REQUESTS Section.
2. In addition, when medical records are requested, a Specific Written Consent (Form 7357, attached) must be provided.
3. The Company cannot delete any medical information.

Procedures for Other Third Party "Designated Representative":

1. The same procedures as listed under EMPLOYEE REQUESTS Section and Collective Bargaining Agent provision above.
2. In addition, when exposure records are requested and/or analyses using exposure or medical records, a Written Authorization (form attached) must be provided.

OSHA REQUESTS

Discussion: OSHA requests must be handled in a different manner from employee and designated representative requests.

Procedures for OSHA Requests are as Follows:

1. may demand a search warrant before admitting investigators to review requested records.
2. OSHA is to be provided immediate access as opposed to fifteen days for other requesters.
3. The Company cannot delete any medical information.

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4. shall require OSHA to bear the expense incurred in the copying of requested records.

5. When medical records are requested, a Written Access Order (OSHA Form) must be presented by the OSHA Representative named on the Order.

6. Personal identifiers in analyses using medical records cannot be deleted.

7. The Rule does not provide for deleting trade secret information. shall use a special transmittal letter (attached) when handing over documents containing proprietary information.

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IN RE: ABRAMS November 1992

NOTICE TO ALL EMPLOYEES

HWBB-0032190

1. EXPOSURE, MEDICAL, AND ANALYSIS USING EXPOSURE AND MEDICAL RECORDS ARE MAINTAINED FOR THIS WORKPLACE. THEY ARE LOCATED AT _____ AND ARE AVAILABLE FOR YOUR INSPECTION.

2. THE PERSON RESPONSIBLE FOR MAINTAINING AND PROVIDING ACCESS TO THESE RECORDS IS _____.

3. YOU HAVE RIGHTS OF ACCESS TO THESE RECORDS.

4. A COPY OF THIS OSHA RULE IS AVAILABLE BY CONTACTING _____.

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ACCESS REQUEST

MW88-0032191

Date _____

I, _____, request
(Requester)

to provide access to the following in accordance with 29 C.F.R. §1910.20:

Signature

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Number Time

Form _____

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UNITED STATES

			Date
Last Name	First Name	Middle Initial	Social Security No.

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AUTHORIZATION TO RELEASE MEDICAL INFORMATION FROM

I hereby authorize _____ to disclose medical information in its possession on the person named above to (name and address) _____

in regard to (cite specific illness, disability or research study):

- (a) This medical information is released with the stipulation that the medical information released, with all copies, will be returned to _____ within _____ Initial _____
- (b) This information will not be disclosed to others except with my written permission or except as required by law. Initial _____
- (c) _____ is authorized to release information from my medical file related to the purpose stated above and to individual named above for _____ from this date. Initial _____
- (d) a, b, and c above are not applicable (to be used when release is to the family physician). Initial _____
- (e) _____ is authorized to release information from my medical file covering the period _____ to _____ Initial _____

Witness

Signature

Signer — indicate relationship to person named in statement above (viz: "self," "executor," "attorney," or other status).
If other than self, submit proof of capacity to act for the person named above.

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WRITTEN AUTHORIZATION

I, _____, hereby name
_____ to be my "Designated
Representative" for purposes of the OSHA Access Records Rule and
authorize him/her to have access to the following exposure records
and analyses using exposure or medical records:

(Type Employee's Name)

Date: _____

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LETTER: ABRAMS

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WBB-0032194

PROPOSED DOCUMENT TRANSMITTAL LETTER

To: OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Re: Records requested pursuant to 29 CFR §1910.20, as amended (Exposure/Medical Records Access Rule)

Attached are copies of the records that you requested be made available to the Occupational Safety and Health Administration by

Many of the documents submitted herewith contain information which regards as confidential largely because they concern or relate to highly sensitive personal information or proprietary information including, but not limited to, trade secrets, processes, operations, style of work or apparatus, or to commercial or statistical data, which in the hands of third parties could be competitively harmful to

Accordingly, you are advised that PPG requests such documents be accorded confidential treatment and, consequently, be exempted from disclosure under the Freedom Of Information Act or otherwise to any third party. The statutory and regulatory bases for the requested exemption are, among others, the Freedom of Information Act [5 USC §552(b) (3), (4), (6), and (7)], the Trade Secrets Act (18 USC §1905) and the OSHA's Freedom Of Information Act regulations (29 CFR §2201 et seq. and §70.26, 70a.3.)

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The submission of these records is being made with the understanding that OSHA will afford adequate prior notice (1) of any determination by OSHA not to accord confidential treatment to all or any of such documents or the information contained in such documents and/or (2) of any request of OSHA by any third party, or the commencement of any proceedings by any third party to cause OSHA, to disclose all or any of such documents or the information contained in such documents and on the further understanding that OSHA will not disclose all or any of such documents or the information contained in such documents in any ruling or other document that would be subject to disclosure under the Freedom Of Information Act or otherwise. Such notice may be afforded by telephoning the undersigned at _____.

requests that all of the attached documents be returned to it upon the completion of OSHA's investigation and/or use with respect to the reason for requesting access pursuant to 29 CFR §1910.20.

REPRESENTATIVE

NW88-0032195

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PLANT RIGHTS UNDER THE OSHA RECORDS RULE

1. As the present status of the law permits, you have the right to demand a search warrant before admitting investigators.
2. You have the right to say medical records are not in your custody but you must give their location (medical institution or physician) to the OSHA representative or other requester.
3. You have the right to refuse access to information when you can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.
4. You have the right to refuse to copy for a requester any record that has been previously provided (copied) unless the record contains additional information.
5. You have the right to withhold from the employee, but not his designated representative, medical information relating to terminal illness or psychiatric condition that, in the physician's opinion, would be detrimental to the employee's health.
6. You have the right to receipt of a Written Access Order before granting access to OSHA of any medical records.
7. You have the right to receipt of a Specific Written Consent before granting access to an employee or his designated representative of any medical records.
8. You have the right to refuse access to an employee's designated representative unless the representative produces written authorization from the employee.
9. You have the right to keep and maintain all relevant records in the manner they are presently kept and maintained.
10. You have the right to take 15 days in granting access to an employee or his designated representative unless that time is unreasonable under the circumstances.
11. You have the right to refuse access to employees or designated representatives to portions of analyses using exposure or medical records containing personal identifiers if you can show that removal of the personal identifier portions is not feasible.
12. You have the right to delete trade secret data from records requested by an employee or his designated representative.

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PART 1910

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SUBPART C—GENERAL SAFETY AND HEALTH PROVISIONS

1910.20 Access to employer exposure and medical records

STANDARDS AND INTERPRETATIONS

**1910.20—ACCESS TO EMPLOYEE EXPOSURE
AND MEDICAL RECORDS**

(a) **Purpose.** The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records; and to provide representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

(b) Scope and application.

(1) This section applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) This section applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

(3) This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that

the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained.

(c) Definitions.

(1) "Access" means the right and opportunity to examine and copy.

(2) "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

(3) "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(4) "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

(5) "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

(i) environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as

STANDARDS AND INTERPRETATIONS

related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(ii) biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

(iii) material safety data sheets; or

(iv) in the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

(6)

(i) "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:

(a) medical and employment questionnaires or histories (including job description and occupational exposures),

(b) the results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring),

(c) medical opinions, diagnoses, progress notes, and recommendations,

(d) descriptions of treatments and prescriptions, and

(e) employee medical complaints.

(ii) "Employee medical record" does not include the following:

(a) physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and are not required to be maintained by other legal requirements.

(b) records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.), or

(c) records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

(7) "Employer" means a current employer, a former employer, or a successor employer.

(8) "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

(9) "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

(10) "Specific written consent"

(i) means a written authorization containing the following:

(a) the name and signature of the employee authorizing the release of medical information,

(b) the date of the written authorization,

(c) the name of the individual or organization that is authorized to release the medical information,

(d) the name of the designated represent-

STANDARDS AND INTERPRETATIONS

(e) Access to records.

(1) General.

(i) Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

(ii) Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

(a) a copy of the record is provided without cost to the employee or representative,

(b) the necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record, or

(c) the record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

(iii) Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that

(a) An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

(b) An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

(iv) Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

(2) Employee and designated representative access.

(i) **Employee exposure records.** Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, exposure records relevant to the employee consist of:

(a) records of the employee's past or present exposure to toxic substances or harmful physical agents,

(b) exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(c) records containing exposure information concerning the employee's workplace or working conditions, and

(d) exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

(ii) Employee medical records.

(a) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in paragraph (e)(2)(ii)(d) below.

(b) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. Appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical records.

(c) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(1) consult with the physician for the purposes of reviewing and discussing the records requested,

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(2) accept a summary of material facts and opinions in lieu of the records requested, or

(3) accept release of the requested records only to a physician or other designated representative.

(d) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(e) Nothing in this section precludes a physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

(iii) Analyses using exposure or medical records.

(a) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(b) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security

number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.

(3) OSHA access.

(i) Each employer shall, upon request, assure the immediate access of representatives of the Assistant Secretary of Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.

(ii) Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

(f) Trade secrets.

(1) Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

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(2) Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

(3) Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

(g) Employee information.

(1) Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following:

- (i) the existence, location, and availability of any records covered by this section;
- (ii) the person responsible for maintaining and providing access to records; and
- (iii) each employee's rights of access to these records.

(2) Each employer shall make readily available to employees a copy of this standard and its appendices, and shall distribute to employees any informational materials concerning this standard which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

(h) Transfer of records.

(1) Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected

employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

(3) Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

(i) transfer the records to the director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

(ii) notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

(4) Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

(i) Appendices. The information contained in the appendices to this section is not intended, by itself, to create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

(j) Effective date. This section shall become effective on August 21, 1980. All obligations of this section commence on the effective date except that the employer shall provide the information required under paragraph (g)(1) of this section to all current employees within sixty (60) days after the effective date.

Appendix A to § 1910.20—Sample Authorization Letter for the Release of Employee Medical Record Information to Designated Representative

I, _____ (full name of worker/patient) hereby authorize _____ (individual or organization holding the medical records) to release to _____ (individual or organization authorized to receive the medical information), the following medical information from my personal medical records:

(Describe generally the information desired to be released)
I give my permission for this medical information to be used

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for the following purpose: _____, but I do not give permission for any other use or re-disclosure of this information.

(Note.—Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

Appendix B to 1910.20—Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS)¹

The final standard, 29 CFR 1910.20, applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents (paragraph (b)(2)). The term "toxic substance or harmful physical agent" is defined by paragraph (c)(11) to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analyses of these records) relevant to employees exposed to the substance.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS, and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by section 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669(a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Foreword and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment. (p. iii)

"This Registry contains 124,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry. (p. xiii)

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous. (p. xiii)

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters. (p. xiii)

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences. (p. xiv)"

The RTECS 1978 printed edition may be purchased for \$13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (Order GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to quarterly microfiche may be purchased from the GPO for \$14.00 (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at the OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or at any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

¹ On April 24, 1980, the Director of the Federal Register approved for incorporation by reference into 29 CFR 1910, the 1978 edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances (the Registry). (See CFR 1910.20(c)(11)(ii)).

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(6) Guidelines for medical surveillance of workers, including pre-employment physical examinations to eliminate those physically or psychologically unfit to wear respirators, and periodic physical examinations to review the effectiveness of the respirator program on the basis of physiological factors.

(7) Guidelines for evaluating the programs effectiveness.

3. Exact format of the written procedures can vary with each location.
4. Evaluate program annually.

Z.R.H.
5/7/81